



## Jersey Financial Services Commission

### **Briefing Note in advance of a consultation seminar in relation to legislative proposals arising out of Directive number 2011/61/EU of the European Parliament and of the Council.**

**The seminar will be held at 2.30 p.m.  
on Tuesday 4 September 2012 at the Pomme D'Or Hotel.**

#### **1 Background**

- 1.1 Some of the funds established in Jersey, or certain services to which are provided in Jersey, are marketed into Member States of the European Union. The Alternative Investment Fund Managers Directive (2011/61/EU) of the European Parliament and of the Council (the “**Directive**”), although not having a direct effect in Jersey, will have an impact on the ability of funds established in or certain services to which are provided in Jersey to be marketed into any Member State of the European Union. For the purpose of the Directive a “fund” has a broader meaning than under the Collective Investment Funds (Jersey) Law 1988. This means that arrangements which are not currently treated as collective investment funds in Jersey law may be within the scope of the Directive. Jurisdictions outside the EU, such as Jersey, are described in the Directive as “third countries”.
- 1.2 The Directive provides that a fund to which the Directive applies which is established in or certain services to which are provided in a third country, may be marketed in a Member State of the European Union only if certain requirements set out in the Directive are satisfied. One of the requirements is that the supervisory authorities of the third country enter into co-operation arrangements with the supervisory authorities of the Member State(s) where it is desired that units of an Alternative Investment Fund be marketed. It is currently contemplated (by ESMA – the European Securities and Markets Authority – which has the responsibility of co-ordinating the conclusion of the arrangements) that the cooperation arrangements will take the form of a standard form memorandum of understanding. The memoranda of understanding are to be entered into between the regulatory authorities of third countries, in this case, Jersey, and, individually, the regulatory authorities of the relevant Member State(s). There is some urgency in dealing with these issues because the memoranda have to be in place before June 2013 and will be available to sign in the near term.

---

## **2 Review of the Current Position**

- 2.1 In preparation for the signing of memoranda of understanding and the Directive becoming effective, the Commission has reviewed relevant Jersey legislation. The Commission has worked closely with Jersey Finance Limited (“JFL”), Jersey Funds Association (“JFA”) and a group of funds lawyers assembled by Jersey Finance Limited in formulating proposals, which will be presented at the meeting, to put Jersey in the best possible position to take advantage of the opportunities presented by the Directive both under the “private placement” regime (expected to be from 2013) and using the “passporting” route (expected to be from 2015). All four groups are in favour of the proposals.

## **3 Principles Regarding Change**

- 3.1 Consideration has been given to the method by which the necessary changes in the legislative regime might be brought about. In formulating its proposals the Commission and the other participants have been influenced by three competing factors:
- 3.1.1 the wish not to bring existing funds into the scope of regulation (and possibly disrupt existing regimes) where doing so is not necessary;
  - 3.1.2 the wish not to increase the complexity of the Jersey funds regime by introducing further legislation unless it cannot be avoided; and
  - 3.1.3 the wish to ensure that funds (established or to be established) which do not need to be affected by changes brought about in response to the requirements of the Directive – that is, which are not marketed into Member States of the European Union – can continue unaltered where appropriate.

## **4 Consultation Seminar in relation to Proposed Changes**

- 4.1 The detail of the legislative proposals which are proposed, and further details of the thinking behind them, will be explained at the seminar. Representatives of the Commission, JFL, JFA and the group of funds lawyers will be present at the seminar and will be able to explain why the proposals, as finalised, takes the form they do. At that seminar the plans of the Commission, JFL, JFA and the group of lawyers to address further issues raised by the Directive – particularly in relation to “passporting” – will be outlined in general terms.