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COVID-19: REGULATORY FORBEARANCE FOR FUND ANNUAL REPORTS UNDER EU AIFMD

To Our Clients and Friends:

The European Securities and Markets Authority (“**ESMA**”) has published a public statement^[1] detailing actions to mitigate fund managers’ reporting obligations. This client alert provides EU alternative fund managers (“**AIFMs**”), and non-EU AIFMs marketing their funds in the EU, with an overview of the impact of the public statement on the obligation to publish an annual report for the funds they manage.

Why has ESMA published the public statement?

The public statement is intended to promote coordinated action between EU national competent authorities (“**NCAs**”) in light of the coronavirus outbreak. Fund managers, including EU AIFMs and non-EU AIFMs marketing their funds in the EU, are subject to the requirement to publish annual reports with respect to the funds they manage.

ESMA states that fund managers are expected to exercise their best efforts to prepare the annual reports and publish them by the relevant deadline. However, ESMA acknowledges that fund managers (and their auditors) are subject to constraints which may substantially impair their ability to publish the annual reports in respect of their funds by the deadline. ESMA has, therefore, suggested that NCAs exercise regulatory forbearance when considering taking action against fund managers for failing to publish annual reports on time for certain reporting periods.

Which reporting periods does the public statement cover?

The public statement concerns the publication of reports for the reporting periods ending from 31 December 2019 to 30 April 2020 inclusive.

How does the public statement impact EU AIFMs?

EU AIFMs are required to publish an annual report with respect to each EU alternative investment fund (“**AIF**”) they manage and for each AIF they market in the EU, no later than six months following the end of the AIF’s financial year. For the financial year end of 31 December 2019, the latest publication date is 30 June 2020.

Does the public statement impact non-EU AIFMs?

To the extent that a non-EU AIFM manages an AIF that has been marketed in the EU via a member state’s national private placement regime under Article 42 of the AIFMD, it will be subject to the

requirement to publish an annual report. This report is due no later than six months following the end of the AIF's financial year. Again, for the financial year end 31 December 2020, the latest publication date is 30 June 2020.

What regulatory forbearance does ESMA suggest?

ESMA expects NCAs to act in accordance with national rules set out in their member states and not to prioritise supervisory actions against fund managers in respect of the upcoming deadlines with respect to:

- annual reports referring to a year-end occurring on or after 31 December 2019 but before 1 April 2020 for a period of two months following the relevant deadline; and
- annual reports referring to a year-end occurring on or after 1 April 2020 but before 1 May for a period of one month following the relevant deadline.

What steps should fund managers take now?

ESMA states that where fund managers reasonably anticipate that publication of annual reports will be delayed beyond the normal regulatory deadlines, they are expected to inform their NCA promptly of this and to inform investors as soon as practicable of the delay, the reasons for such a delay and to the extent possible the estimated publication date.

Fund managers should, therefore, assess now whether they will be in a position to publish the annual reports for the funds they manage by the relevant deadline. If your firm has any concerns regarding the publication of annual reports, or any of its other regulatory obligations during the current outbreak, we would be more than happy to discuss this with you.

[1] https://www.esma.europa.eu/sites/default/files/library/esma34-45-896_public_statement_on_publication_deadlines_in_fund_management_area.pdf



Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact your usual contacts or any member of the Firm's Coronavirus (COVID-19) Response Team or the authors in the UK:

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