

Date: 3 December 2012
ESMA/2012/798

PRESS RELEASE

EU and Swiss regulators to co-operate on cross-border supervision of alternative investment funds

The European Securities and Markets Authority (ESMA) has approved the co-operation arrangements between the Swiss Financial Market Supervisory Authority FINMA and the EU securities regulators for the supervision of alternative investment funds, including hedge funds, private equity and real estate funds. ESMA has negotiated the agreement with FINMA on behalf of all 27 EU national competent authorities for securities markets regulation.

The co-operation arrangements include the exchange of information, cross-border on-site visits and mutual assistance in the enforcement of the respective supervisory laws. This co-operation will apply to Swiss alternative investment fund managers (AIFMs) that manage or market alternative investment funds (AIFs) in the EU and to EU AIFMs that manage or market AIFs in Switzerland. The agreement also covers co-operation in the cross-border supervision of depositaries and AIFMs' delegates. The agreement will take the form of a Memorandum of Understanding (MoU) between the EU securities supervisors and FINMA.

Steven Maijoor, ESMA Chair, said:

“The agreement by EU and Swiss supervisors to facilitate co-operation on the supervision of cross-border alternative funds is an important step in increasing investor protection and the global consistency of supervision.

“ESMA sees this agreement as a signal of third countries' willingness to cooperate to meet AIFMD's requirements, however further work needs to be done with non-EU authorities to achieve our goal of completing all MoUs by the July 2013 deadline.”

Professor Anne Héritier Lachat, FINMA Chair:

“The agreement between FINMA and EU supervisors will further improve cross-border supervision of the funds business and ultimately reinforce investor protection in cross-border operations of alternative funds. Moreover, the agreement is timely with respect to the transposition of the AIFMD in EU Member States in July 2013. It will establish a framework for cooperation between supervisory authorities required under the AIFMD to manage, market and delegate the management of EU alternative funds.”

The key elements of the EU-Swiss cooperation agreement are:

- EU and Swiss supervisors will be able to supervise fund managers that operate on a cross-border basis in the EU and Switzerland;
- The co-operation between the authorities includes the exchange of information, cross-border on-site visits and assistance in the enforcement of the respective laws (i.e. the Alternative Investment Fund Managers Directive (AIFMD) and the Swiss Federal Act on Collective Investment Schemes of 23 June 2006);
- EU authorities will be able to share relevant information received from FINMA with other EU authorities, ESMA and the European Systemic Risk Board, provided appropriate safeguards apply;
- The existence of co-operation arrangements between the EU and non-EU authorities is a precondition of the AIFMD for allowing managers from third countries to access EU markets or perform fund management by delegation from EU managers; and
- The EU-Swiss co-operation arrangements are applicable from 21 July 2013 and enable cross-border management and marketing to professional investors of alternative investment funds.

The content of the Memorandum of Understanding follows the IOSCO Principles on Cross-Border Supervisory Co-operation of 2010, and complements the terms and conditions of the IOSCO Multilateral MoU Concerning Consultation and Co-operation and the Exchange of Information of 2002.

ESMA is currently in contact with other non-EU authorities that are members of IOSCO, and is continuing to negotiate co-operation arrangements with the relevant authorities with a view to having these in place before July 2013. According to the AIFMD, the fund industry from a non-

EU country whose securities regulator does not have such co-operation arrangements in place by July 2013 will not be permitted to offer or manage AIFs in the EU.

The MoU with FINMA is consistent with the Regulation implementing the AIFMD that the European Commission is expected to adopt shortly, and does not pre-empt the EU Parliament and Council's right to object to the Regulation. If the implementing Regulation was to be amended, ESMA would review this and any other MoU accordingly.

Notes for editors

1. ESMA is an independent EU Authority that was established on 1 January 2011 and works closely with the other European Supervisory Authorities responsible for banking (EBA), and insurance and occupational pensions (EIOPA), and the European Systemic Risk Board (ESRB).
2. ESMA's mission is to enhance the protection of investors and promote stable and well functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.
3. FINMA is an independent state supervisory authority of banks, insurance companies, exchanges, securities dealers, collective investment schemes, distributors and insurance intermediaries.

Further information:

Reemt Seibel

Communications Officer, ESMA

Tel: +33 (0)1 58 36 4272

Mob: +33 6 42 48 55 29

Email: reemt.seibel@esma.europa.eu

Tobias Lux

Spokesperson FINMA

Tel: +41 (31)327 91 71

Email: tobias.lux@finma.ch