



July 11, 2014

## Transitional period for marketing of funds in Germany expires 21 July 2014

On 17 June 2014, the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht or “BaFin”) published an amended version of its “Guidance Notice on the notification of the intended marketing of EU AIF or foreign AIF to private investors in the Federal Republic of Germany pursuant to section 320 of the Investment Code”.

### Action required for funds under public marketing license

The BaFin points out that non-German AIFs, which have been licensed for public marketing in the past under the previous German investment laws (i.e., the Investment Act or the Foreign Investment Act), have to undergo the notification procedure for marketing of non-German AIF to private investors in Germany pursuant to section 320 of the German Investment Code.

In the event that said notification procedure is not successfully completed by 21 July 2014, any marketing activities must be stopped as of 22 July 2014. If the AIFM decides to permanently cease its marketing activities to German investors, this decision must be disclosed to the public by publishing in the German Federal Gazette. The AIFM must provide proof of said publication to the BaFin.

Action is also required if the AIFM intends to continue marketing after 21 July 2014. In the event that the notification procedure is not successfully completed by 21 July 2014,

any marketing activities must be stopped as of 22 July 2014. Other than the decision to permanently cease its marketing activities, the temporary discontinuation of marketing in Germany must not be published in the German Federal Gazette. However, the AIFM must inform the BaFin of its intention to continue marketing after completion of the notification procedure. In addition, the AIFM must inform the BaFin that it will cease marketing as of 22 July 2014 until successful completion of the notification procedure. This information must be submitted to the BaFin in writing by 21 July 2014 at the latest.

### Deadline also applies to private placement regime

Foreign AIFs, which were marketed in Germany prior to 22 July 2013 under the German private placement regime, were out of scope of the previous German investment laws. Thus, the BaFin’s statements do not apply to such funds. However, marketing activities must be stopped as of 22 July 2014 until the notification procedure has been successfully completed.

EU-based AIF managed by EU-based AIFMs benefit from the European marketing passport, provided that marketing is limited to professional and semi-professional investors in Germany. AIFMs and/or AIFs, which are based outside the EU and the European Economic Area, must approach the BaFin and undergo the relevant notification procedure, depending on the targeted investors group.

We would be pleased if we could assist you with any regulatory issues arising in connection with your marketing activities in Germany.



**be** in touch: If you have any questions, please do not hesitate to contact us!



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