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Ex-Morgan Stanley chief forms ENA Investment Capital

George Kounelakis on hiring trail after registering new hedge fund firm

BY WILL WAINEWRIGHT

GEORGE KOUNELAKIS, Morgan Stanley's former European proprietary trading chief, has registered his new hedge fund firm, named ENA Investment Capital, in London and made a boardroom hire as he ramps up the recruitment drive for his highly anticipated debut offering, *HFMWeek* can exclusively reveal.

The former head of the bank's Principal Investments Group in Europe, who left earlier this year to develop his new fund, registered ENA Investment Capital as both a limited company and LLP during August.

Trading veteran Kounelakis has appointed Radenko Milakovic, a partner at $1.2bn Deutsche Bank spin-out Altima Partners, as non-executive director and is currently interviewing candidates in Europe as he builds out his team.

A source familiar with Kounelakis said he was currently "working hard on putting together a very good product," but further details could not be obtained by press time.

The fund may draw on the 38-year-old's extensive experience of different equity and event driven styles acquired during spells at Morgan Stanley, Deutsche Bank and Goldman Sachs.

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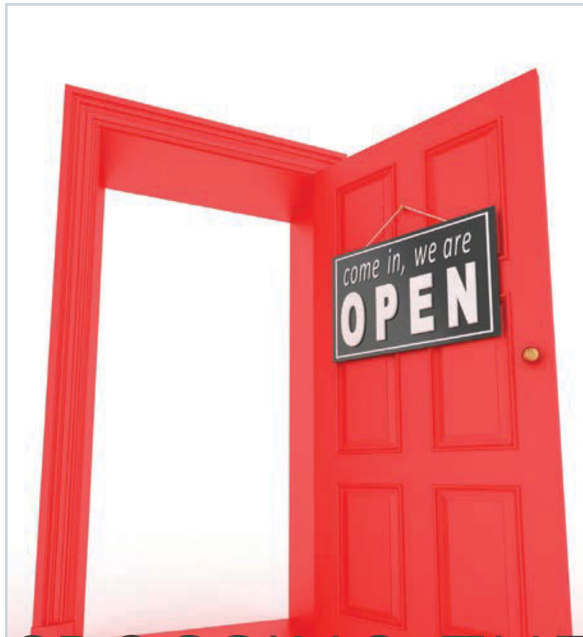

CROSSING THE THRESHOLD

Hedge funds and their service providers are turning their attention to complying with the Erisa pension plan market

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FOCUS ON

SWITZERLAND

With final adoption of the amended legal framework for managers of alternative investment funds and distribution of their products, the uncertainty which has surrounded the subject and caused some confusion within the industry for more than a year now has ended. Dr Guenther Dobrauz-Saldapenna and Dieter Wirth of PwC Zurich provide an update

"THE AMENDED LAW WILL NOW EXTEND LICENSING OBLIGATIONS TO COVER ALL SWISS-BASED MANAGERS INCLUDING THOSE OF FOREIGN ALTERNATIVE INVESTMENT FUNDS"

Dr. Guenther Dobrauz-Saldapenna heads PwC Zurich's Asset Management Regulatory practice. Before that he practised with Deloitte and as an attorney. For a number of years he also served as legal counsel to a VC/PE firm and an international hedge fund. He also lectures on alternative investment law and is co-founder of the Swiss Strategies Group.

After the Swiss Council of States approved the partial revision of the Swiss Collective Investment Schemes Act (Cisa) in June, the Swiss National Council, acting as the second chamber of parliament, also accepted the provisions on 12 September. On 28 September, both chambers passed a final vote on the act. With this, we finally reached safer ground, which will allow for strategic planning by managers who wish to restructure their set-up for compliance with the new regulatory reality. However, some finer points still need to be ironed out in the related implementing ordinance before it also sees the light of day.

The reason for this partial revision of Cisa was basically two-fold: alignment of the Swiss legal framework with requirements of the EU Alternative Investment Fund Managers Directive (AIFMD) (ensuring continued access of Swiss managers and their products to the hugely important EU market), and the closing of perceived regulatory gaps in investor protection within Switzerland.

NEW LICENSING RULES FOR SWISS-BASED HEDGE FUND MANAGERS

The soon-to-be modified Swiss legal framework currently foresees that only asset managers of Swiss collective investment schemes are required to obtain authorisation from the Swiss Financial Market Supervisory Authority (Finma). For Swiss asset managers of foreign collective investment schemes, there is currently no authorisation requirement. But managers that fit into this category can apply for authorisation by the supervisory authority, provided that their registered office or domicile is in Switzerland, that foreign legislation requires that they be subject to a supervisory authority and that the foreign collective investment schemes which they manage are subject to supervision of an equivalent standard to that in Switzerland. This possibility for voluntary application for licensing was enacted for Swiss asset managers of, for example, funds which are launched in an EU or EEA member state and comply with the EU Ucits Directive.

As a consequence, the majority of Swiss-based hedge fund managers were effectively excluded from the possibility of voluntary supervision by Finma since only a limited number of jurisdictions have been recognised as offering an equivalent standard to Switzerland.

The amended law will now extend licensing obligations to cover all Swiss-based managers including those of foreign alternative investment funds. Swiss managers who set up products offshore – where in most instances the effective place of management will have to be relocated to Switzerland rather than remaining offshore due to lack of substance there – will have to consider initiating licensing procedures if they do not wish to find themselves in breach of the amended law. In situations where there is enough substance elsewhere to allow for credible proof that the key functions of an asset manager (portfolio management and risk management) are performed there, Swiss advisors may continue in this role and do not fall under the licensing obligations.

The new rules are expected to come into force at the beginning of the new year and to be fully in force as of July 2013. After this, managers will have to contact Finma within six months and, if necessary, apply for licensing within two years. As is the case in the EU for managers of open-ended investment funds with combined total assets of up to €100m (including leverage), so-called de minimis rules will apply and require only registration rather than full licensing. It is also important to note that in future, Swiss branches of foreign asset managers will be eligible for licensing, provided that they are adequately staffed and capitalised and there is adequate supervision in the asset manager's home jurisdiction; moreover, a co-operation agreement between Finma and the respective authority must be in force. We would like to alert managers who currently allocate key elements of their asset management function to offshore entities that, by shifting regulatory substance onshore and becoming licensed domestically, their overall tax situation will be greatly affected. Thus, appropriate measures to address this situation and potentially soften the effects should be evaluated in good time.

NEW DISTRIBUTION RULES

Until now, Switzerland offered one of the most lenient private placement regimes in Europe, if not in the world and the country offered one of the most extensive definitions of "qualified investor". This is about to change. The concept of 'public promotion' will be substituted with 'distribution' as a key criteria for regulating the offering of alternative investment funds, and to narrow the rather extensive definition of qualified investor. The advertising of interests in collective investment schemes is not deemed to be public if it is exclusively directed towards qualified investors as defined in Cisa, Ciso and the Finma Circular on Public Offering. In future, all distributors, including those of funds for qualified investors, will require authorisation, and their products a representative and a paying agent.

High-net-worth-individuals (HNWIs) who are currently solely defined by their net financial assets but have little or no specific investment experience will no longer qualify. This essentially means that the qualified investor category will only comprise of supervised financial intermediaries (such as banks, securities dealers, fund management companies, regulated asset managers and central banks), supervised insurance companies, public law institutions, pension funds and companies with professional treasury operations. The good news is that HNWIs can opt to be treated as qualified investors. It is also important to note that the purchase of alternative investment funds by regulated or independent asset managers for inclusion in the portfolios of clients with whom they have entered into a written discretionary asset management agreement is not considered distribution; and that such clients are considered qualified investors unless they have explicitly opted out of this status.

Dieter Wirth is a partner in PwC Zurich's Tax and Legal practice and the Asset Management Industry Leader of PwC Switzerland. He is an attorney-at-law, a Swiss certified tax expert and a board member of the Swiss Private Equity & Corporate Finance Association (SECA).

SUMMARY

The extension of the Swiss licensing regime to managers of foreign alternative investment schemes is something that has long been in demand, and as such is more than welcome. It will allow Swiss players to compete on equal terms at the international level, where properly regulated status is expected to soon become a dominant design and decisive in the competition for investor allocations.

The Swiss hedge fund industry has noted with relief that the new legal regime will not be marked by gold plating compared to the EU standards, as was feared for quite some time. Now it remains to be seen whether the details and indeed the authorities' practice will be in line with the reality and actual requirements of this asset class. ■

ZURICH, SWITZERLAND