



Update on Alternative Investment Fund
Managers Directive (“AIFMD”)

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Overview

- What is AIFMD and who does AIFMD apply to?
- Timings
- Transitional provision
- Appointment of an AIFM
- Reporting requirements for a non European AIFM
- Reverse solicitation
- Private Placement – Passport Considerations
- The 3 buckets that countries currently fall into
- Key Considerations and Practical Actions
- How Kinetic has been helping

What is AIFMD and who does AIFMD apply to?

- AIFMD - **A**lternative **I**nvestment **F**und **M**anagers **D**irective
- AIFMD applies to anyone who wishes to **market** private funds in Europe
- If you want to market an AIF in Europe, you must appoint an AIFM:
 - **AIFM** – Alternative Investment Fund Manager (“Investment Advisor”)
 - **AIF** – Alternative Investment Fund (“Private Fund”)

When does AIFMD come into effect?

- Key Dates:
 - **July 22 2013** – AIFMD took effect, must nominate AIFM (unless relying on the transitional provision)
 - **July 21 2014** – Full implementation / registration (end of transitional provision)
 - **July 21 2015** – Passporting rules

The transitional provision

- Allows firms to continue market into certain European Countries without appointing an AIFM until July 21, 2014
- Adopted by UK and Germany and several other countries
- Be careful! Is adopted differently in different countries so need to understand nuances in each jurisdiction.

Appointment of an AIFM

- AIFM does not have to be a European entity
- Firms need to consider which entity to appoint as the AIFM
- If the AIFM is a European entity – the requirements are more stringent than if the entity is non-European

Therefore...

- Firms are considering appointing non-European entities within their groups
- However, there are several key considerations, including tax and corporate structure
- Letter box restriction

Reporting requirements for a non European AIFM

Most of these are items that the AIFM will already have through existing regulatory requirements.

Art.22 Annual Report

- An AIFM for each of the AIFs it markets in Europe must make available an annual financial report no later than 6 months following the end of the financial year end. This shall be provided to investors upon request.

Reporting requirements for a non European AIFM cont'd

Art 23 Disclosure to investors

An AIFM, for each of the AIFs it markets in Europe, must make available to AIF investors:

- a description of the investment strategy and objectives of the AIF and the procedures by which this may change;
- a description of the main legal implications of the contractual relationship entered into for the purpose of investment;
- the AIF's depositary, auditor and any other service providers and a description of their duties
- description of the AIF's valuation procedure and of the pricing methodology for valuing assets
- a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors; and
- where available, the historical performance of the AIF.

Reporting requirements for a non European AIFM cont'd

Art 24 Information to each Competent Authority of each European State to which the AIF is marketed

- the main instruments in which it is trading
- the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- any new arrangements for managing the liquidity of the AIF;
- the current risk profile of the AIF

Upon request, the following should also be provided:

- an annual report of each AIF
- leverage information
- monitoring of systemic risk

Private Placement – Passport Considerations

- If you wish to market non-European domiciled AIFs, you will only be able to market private funds into European countries that have a private placement regime
- **Italy** and **France** do not have a private placement regime
- If you wish to market into European countries that do not have a private placement regime, you will need either need to rely on reverse solicitation or obtain a “**Passport**”
 - Passport can be obtained only if you have a European domiciled AIF and a European based AIFM
 - Therefore firms may consider setting up a European feeder fund

Reverse solicitation

- Can allow marketing into all countries
- Must be able to evidence
- Cannot solicit reverse solicitation (e.g mass mailing)

Currently EEA countries fit into 3 buckets

1. Countries that have adopted the transitional provision
2. Countries that have no private placement regime
3. Countries that have a private placement regime but have not adopted the transitional provision

Practical issues we are seeing

- Investor conferences
- Activities of prime broker
- Activities of third party marketers
- Marketing practices

Key Considerations

Considerations that firms should now be answering:

- Will you market in Europe?
- Which entity to appoint as the AIFM?
- Which countries do you wish to market to?
- What is the domicile of your contacts?
- What controls do you have on third party marketers

How Kinetic has been helping

- Assistance with ongoing reporting requirements
- Gap analysis of documentation
- Practical implementation queries
- Ah hoc queries

Thank you
Any Questions?