FINANCIAL SERVICES

What non-EU AIFMs need to know about the AIFMD

What is the AIFMD?

In the aftermath of the global financial crisis, the European Commission drafted one of the most ambitious and complex regulatory reform agendas ever introduced into the asset management industry in the form of the Alternative Investment Fund Managers Directive (AIFMD). The Directive will have profound, wide-reaching and long-term implications for in-scope alternative investment fund managers (AIFMs).

Extensive implications for non-EU AIFMs

The AIFMD applies not only to European Union (EU) AIFMs, but also to those non-EU AIFMs that are managing or marketing AIFMs in EU Member States which have transposed the AIFMD into national law. Indeed, one of the more contentious aspects of the Directive continues to be the onerous requirements and constraints that the regime places upon non-EU AIFMs compared with their EU counterparts.

The following is an overview of several of the key issues that non-EU AIFMs marketing or managing AIFs in the EU will need to consider going forward.

Marketing challenges under a new passport regime

While the AIFMD introduces a new European passport system that EU AIFMs can use to market AIFs throughout the EU, non-EU AIFMs will not have access to an equivalent passport until at least the second half of 2015. It is also worth noting this development would be dependent on the European Securities and Markets Authority (ESMA) making such a passport available to non-EU AIFMs. Accordingly, non-EU AIFMs will need to formulate strategies for the manner in which they will continue to market in the EU after 22 July 2013, when the AIFMD comes into effect.

In the event this non-EU passport regime is indeed approved in the latter half of 2015, non-EU AIFMs managing or marketing AIFs in the EU will be required to apply for authorization and must comply with the requirements outlined in the Directive. In the interim, non-EU AIFMs will only be allowed to market in the EU according to the existing private placement regimes of the individual Member States.

An impending end to the private placement regime

ESMA is also expected to make a recommendation regarding the future of the existing private placement regime, which is expected to remain in place until the latter part of 2018. While ESMA may opt to keep the private placement regime in effect, it is also possible the regime could be terminated, which would mean that the European passport regime would then be the only alternative open to non-EU AIFMs looking to market their AIFs to investors in the EU.

Rigorous new reporting requirements

As part of the changes associated with the AIFMD, non-EU AIFMs will also be subject to demanding new reporting requirements. Many AIFMs KPMG has met with over the past year have expressed surprise at the sheer scope, extent and granularity of the data that their firms will be required to collect and report upon under the Directive. Indeed, many AIFMs will be required to build entirely new aggregate reporting mechanics in order to capture this required data.

In addition to the increase in the types of data upon which AIFMs will be required to report, the timelines for reporting will also be much more compressed under the AIFMD. Many AIFMs are finding that their processes for collecting and reporting data were not designed to comply with such short timeframes and will require significant modifications in order to remain compliant.

Another specific challenge related to the AIFMD reporting requirements has to do with the fact that AIFMs will be required to report in each member state in which they continue to market. For example, in the situation where an AIFM was marketing in 10 Member States, it could be required to report 10 times with 10 different regulators in 10 unique ways. Accordingly, this may prove to be a significant challenge for non-EU AIFMs that are actively marketing in multiple Member States.

No current restrictions on reverse solicitation

At the present time, the AIFMD does not prohibit reverse solicitation, meaning investors in the EU can seek out non-EU managers about investing in non-EU AIFs without the AIFM being subject to the reporting requirements of the AIFMD. AIFMs should ensure, however, that there are no local restrictions on reverse solicitation in the Member States in question and should ensure that it has the right protocol and procedures in place to prove compliance along the process and agreement of the investors with the reverse solicitation procedures.

How KPMG can help?

These are just a few of the many issues that non-EU AIFMs need to consider as a result of the changes associated with the AIFMD. KPMG has demonstrated expertise helping some of the world's largest and most prominent AIFMs prepare for this complex new regulatory regime.

We can provide non-EU AIFMs with complete, outsourced reporting solutions to help them address their newly expanded reporting requirements under the Directive, helping them remain compliant. Our experts will also conduct a gap analysis to identify requirements, to create consistency among data sets for reporting purposes and, if required, to complete the reporting on their behalf.

We have the expertise and the capabilities to help AIFMs operating in any Member State country and regardless of the size or complexity of your organization.

Common AIFMD-related acronyms

AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
ESMA	European Securities and Markets Authority
EU	European Union
FATF	Financial Action Task Force
MiFID	Markets in Financial Instruments Directive
MS	Member State of the European Union
MSR	Member State of Reference for a non-EU AIFM
UCITS	Undertakings for Collective Investment in Transferable Securities

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