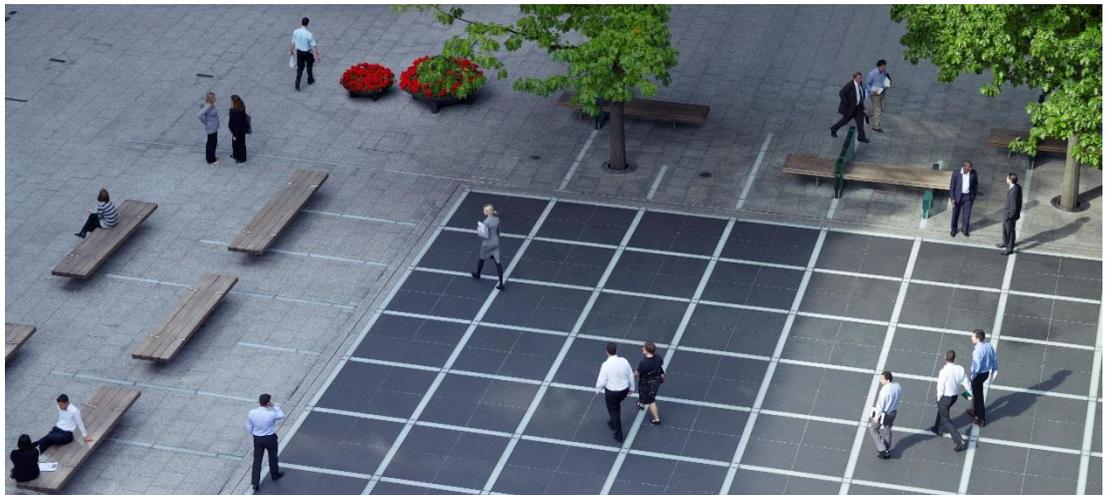


National Private Placement Regimes (NPPR)

Access to Europe for non EU alternative fund managers

September
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NPPR is a mechanism that allows non EU alternative fund managers/non EU alternative funds to continue to market in Europe without using the Alternative Investment Fund Manager Directive (AIFMD) passport. It is important for managers to ensure that they are complying with the NPPR rules outlined in the AIFMD and the requirements of local regulators. Europe cannot be seen as one homogenous block in this regard as the requirements differ from country to country. It is important therefore to analyse the requirements and associated costs as part of a distribution strategy in order to ensure success in Europe.

Background

In 2013, AIFMD introduced regulatory requirements for all EU alternative investment fund managers (AIFMs) and for all Alternative Investment Funds (AIFs) marketing into the EU.

Marketing under the AIFMD covers any “direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM, of units or shares in a fund it manages to or with investors domiciled in the EU” This means that any alternative managers actively marketing their funds within the EU must be compliant with AIFMD either through use of NPPR & the passport (which currently is only available to EU AIFMs although there are ongoing discussions in relation to extending the passporting option to non EU countries. A number of countries have been approved in principle based mainly on their AIFMD like regimes but it is uncertain if and when the third country passport will be implemented.

Reverse solicitation or passive marketing which is marketing which is not at the direct or indirect initiative of the fund manager is still permitted under the AIFMD i.e., if an investor approaches the manager about investing in a fund without prior solicitation. There is however no firm guidance as to what constitutes reverse solicitation and a manager intending to rely on reverse solicitation would need to ensure that procedures and policies were put in place to clearly demonstrate that a particular EU investor invested in the fund on this basis. It would also need to ensure that follow up communications with such investors didn't inadvertently result in active marketing. If a manager is unwilling to rely on reverse solicitation, then the only alternative at present for managers is to market in accordance with existing passporting or private placement regimes.

The below table outlines marketing options available dependent on the location of the AIF and AIFM. In summary, if a non EU manager does not establish an EU AIFM which would enable the use of the passporting regime, the options open to them for accessing Europe are the National Private Placement Regimes (NPPRs) or reverse solicitation.

AIFMD Marketing Options

Location of the AIFM	Location of the AIF	Marketed in the EU	Subject to AIFMD	Marketing Options
EU	EU	Yes	Yes	Passport
EU	Non-EU	Yes	Yes	NPPR*
Non-EU	EU	Yes	Yes	NPPR*
Non-EU	Non-EU	Yes	Yes	NPPR*

* Third country AIFMD passport still under discussion with ESMA.

National Private Placement Regimes (“NPPR”)

NPPR is a mechanism to allow AIFMs to market AIFs that are not allowed to be marketed under the AIFMD domestic marketing or passporting regimes. This principally relates to the marketing of non-EU AIFs and AIFs managed by non-EU AIFMs. However, it also relates to the marketing of feeder AIFs where the master AIFM is a non-EU AIFM or the master AIF is a non-EU AIF. The majority of EU countries intend to allow some form of private placement but the requirements vary among member states. All countries that intend to allow private placement will apply at least the minimum AIFMD standards outlined below and require notification to the home regulator of the intention to market in the country.

- The non-EU AIFM must comply with the transparency requirements of the Directive;
- If the manager manages an AIF which acquires control of a non-listed company, the provisions of the AIFMD relating to major holdings and control must be complied with (Directive 2011/61/EU articles 26 -30);
- Appropriate cooperation arrangements must be in place between the regulator of the member state where the AIF is marketed and the regulator of the AIFM's Non-EU country;
- Appropriate cooperation arrangements must be in place between the competent authorities of the member state where the AIF is marketed and the country where the Non-EU AIF is established; and
- The Non-EU country must not be listed as a Non-Cooperative Country and Territory by the Financial Action Task Force.

AIFMD allows local regulators to add additional requirements to the minimum standards outlined above at their discretion. The complexity of these additional requirements differ from country to country. The main differences are in relation to timelines, fees, levels of information required, documentation and need for local service providers. Some countries have made it more onerous than others for managers to implement the requirements.

How can we help?

Distribution Strategy

Developing and maintaining a distribution strategy is time consuming and complex. We are finding that managers are spending more time assessing the options, requirements and costs BEFORE determining what countries they sell product into to ensure success. We can help with this process by providing detailed information covering the below areas.

Market Overview

- A general **overview of the environment** for your chosen markets that could impact on your distribution decision making;
- Information on **what sells and where** – giving you the market intelligence to make decisions based on your product types;
- **Peer analysis of your strategies** in your chosen jurisdictions; and
- Detail on the available **distribution channels** in each market.

Market Entry

- Identifying the **requirements for market entry** in each jurisdiction;
- Assisting you in understanding how these requirements can be met **including managing the differences in each jurisdiction** and the interaction with each local regulator;
- Providing you with a **detailed timeline** for each jurisdiction;
- Providing you with **detail on the costs** associated with entering each jurisdiction, both initially and on an ongoing basis; and
- Assessing the **tax implications** of entering each market.

We will present this information to you in a clear way to enable you to use this knowledge to make informed decisions about your distribution strategy.

Fund Registration

If you decide to go ahead and register your fund for sale in any of your chosen countries we can help with the registration process. The regulatory requirements vary from country to country and it can be complex to identify, document and ensure compliance – particularly when selling into many jurisdictions. We can help you on this journey by:

- **Communicating the requirements** to you;
- **Registering your funds** with the relevant regulators on your behalf – identifying the correct forms that need to be completed, identifying the information required, communicating with each regulator to register your funds, managing queries from each regulator, letting you know when you are able to market in each territory;
- **Assisting you by letting you know what other parties need to be engaged** (e.g. local service providers, translators etc.) and letting you know who the market participants are;
- **Ensuring that you are aware of costs** in each market including detail such as regulatory fees, translations and local service provider costs;
- **Ongoing maintenance of your filing** which includes making you aware of all filing obligations and filing these with local regulators on your behalf;
- **Monitoring changes** over time to ensure that you are always up to date in terms of regulatory and ongoing reporting requirements; and
- Giving you **ongoing access to our Distribution Services team** for ad hoc queries.

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