Cooley

June 26, 2015

## Introduction

Many non-EU alternative investment fund managers (**AIFMs**) raising non-EU alternative investment funds (**AIFs**) will accept a European investor on a "*reverse solicitation*" basis; but they won't "***market***" into Europe. This is usually because:

1. If they avoid that, they avoid the AIFMD; and
2. They expect the cost of AIFMD compliance to be disproportionately high, when compared to the investments they'll receive.

But sometimes, the cost is surprisingly low, or the cost / benefit analysis can be made to work.

We've prepared a series of client alerts which explore these issues. This one is focussed on the "*AIFMD-lite*" regime for "*small*" non-EU AIFMs raising non-EU AIFs from (a) non-EU investors; and (b) *"professional investors*" domiciled in the UK. It is only concerned with AIFMD compliance. The general law and the UK's National Private Placement Regime may impose additional obligations. Our other alerts are available **here**.

#### The AIFMD-lite regime for small fund managers—"*marketing*" into the United Kingdom

If you're a "*small*" non-EU AIFM; and you want to "*market*" interests in a non-EU AIF to non-EU investors and"*professional investors*" domiciled in the UK, you'll barely have to engage with the AIFMD at all.

1. **Are you "*small*"?**

   Yes – if you "*directly or indirectly … manage portfolios of [AIFs] whose assets under management … in total do not exceed*":

   a. €500 million – if the AIFs are unleveraged, and do not include redemption rights that are exercisable in the first 5 years after the first investment in each fund; or

   b. €100 million.

2. **Do you want to "*market*" to non-EU investors, and "*professional investors*" in the UK?**

   Yes – if:

   a. You want to make "*a direct or indirect offering or placement … of [interests in an AIF] to … investors domiciled or with a registered office in…*" the United Kingdom; and

   b. Those investors are authorised firms, "*large undertakings*", public bodies; and/or "*institutional investors*". (It's sometimes possible to "*market*" to other types of investor as well. But, when it is, additional obligations will apply.)

(It's sometimes possible to "*market*" to other types of investor as well. But, when it is, additional obligations will apply.)

Probably not (at least from a UK perspective), if you only want to send promotional presentations and pathfinder PPMs to potential UK investors, before communicating about these documents.

**If you're "*small*" and you want to "*market*" to non-EU investors, and"*professional investors*" in the UK, you only need to:**

1. Fill in a short form, and e-mail it to the UK's Financial Conduct Authority (**FCA**); and
2. Start "*marketing*" after that.

The FCA will ask you to pay a notification fee of £125, a few weeks after you submitted your form.

**If you "*market*" for a year, or you accept a UK investor, you will also need to:**

1. Pay an annual fee of £350;
2. Prepare and submit an annual report to the FCA, which summarises:
   a. The AIF's main assets;
   b. The AIF's investment strategies, as well as its geographic and sectoral investment focus;
   c. The markets in which the AIF trades; and
   d. The diversification of the AIF, its principal exposures and most important concentrations.

   The FCA may ask for additional information, if there's something about you or your AIF that means that you could contribute to or exacerbate a systemic risk. We anticipate that this will rarely happen to "*small*" AIFMs;
3. Tell the FCA if the aggregate value of your assets under management (**AUM**) exceeds the relevant threshold (€500m or €100m). If it does, you may also have to file a more detailed registration notice, and be required to comply with more of the AIFMD's reporting rules, after that; and
4. Er, that's it.