

July 30, 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 Belgium, or domiciled in the United Kingdom and Belgium. It is only concerned with AIFMD compliance. The general law and the local National Private Placement Regimes may impose additional obligations. Our other alerts are available [here](#).

The AIFMD-lite regime for small fund managers—"marketing" into Belgium

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 Belgium, 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 Belgium?

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...*" Belgium; 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.)

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

1. Send an e-mail to the Belgian Financial Services & Markets Authority (**FSMA**), which:
 - a. Gives notice of your intention to "market" to "*professional investors*" that are domiciled, or have their

registered office, in Belgium;

- b. Gives your full name and address, and the full name and address of the relevant AIF;
- c. Describes the AIF's investment strategy; and
- d. Describes the main instruments in which the AIF will trade, and the principal exposures and most important investment concentrations the AIF will have or take;

2. Wait for FSMA to "*recognise*" you and/or the AIF—this only takes a few weeks.

Note that:

- a. Everything can be done in English;
- b. There's nothing to pay; and
- c. When you receive FSMA's recognition, you can start "*marketing*" to "*professional investors*" that are domiciled, or have their registered office, in Belgium;

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

1. Prepare and submit an annual AIF and AIFM report to FSMA, which summarises (for example):
 - a. The AIF's main assets;
 - b. The AIF's investment strategy, as well as its geographic and sectoral focus;
 - c. The markets in which the AIF trades; and
 - d. The diversification of the AIF, its principal exposures and most important concentrations.

Note that:

- a. The reports are submitted online using FSMA's web-based "FIMIS" platform.
 - b. You'll have to give the names of two people who will take responsibility for the reports; and they will need a certificate from an accredited third-party in Belgium; and
 - c. FSMA 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;
2. Tell FSMA 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
 3. Er, that's it.

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

1. Give the UK's FCA notice of your intention to "*market*" an AIF to "*professional investors*" in the UK, by following the guidance in our first alert;
2. When the FCA confirms that your marketing notice has been processed, follow the guidance in this alert too;
3. (If you wish—FSMA doesn't require this), when you send your e-mail to FSMA, mention that you've already given notice to "*market*" interests in the AIF to "*professional investors*" domiciled in the UK, and that the FCA has processed your notice;

4. (If you wish—the FCA doesn't seem to require this either), when you receive confirmation that FSMA recognises you / the relevant AIF, give that information tell the UK's FCA that your AIF has been recognised for marketing to "*professional investors*" domiciled in Belgium as well.

Note: you'll need materially the same information, in materially the same form, when you prepare and submit your annual report to (a) the UK's FCA; and (b) Belgium's FSMA. You may therefore find that one report can be used to fulfil both reporting obligations; or that the same information can be used for both purposes. Some service providers will help you to prepare and submit these reports if you wish.

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