

Managers need to take a multi-adviser approach

Interview with Matt Mulry

Although the AIFM Directive is uniform EU-wide regulation each member state is likely to adjust its national private placement regime rules idiosyncratically. For managers of non-EU funds, therefore, it's important that they are clear on the rules if they intend to continue marketing to Europe.

"Where managers have Cayman funds they need to talk to their European advisers in the relevant jurisdictions in which they wish to market those funds and also to their Cayman advisers," says Matt Mulry, partner at Dillon Eustace. "Managers want to know how the AIFMD will affect them and their funds, what they can do about it, and whether they should market in Europe and if so in which countries."

Key to managers' ability to market their Cayman funds to Europe is the establishment of co-operation agreements, of which CIMA has now signed 27, including one with Bafin, the German regulator.

"It's novel regulation in that it is impacting Cayman funds through the co-operation agreements that are in place," says Mulry, who goes on to explain what managers need to be aware of with respect to individual private placement rules:

"A manager needs to be clear with their European advisers in each relevant jurisdiction as to what is required in order to comply with the different private placement regimes. These regimes are likely to require specific and very likely different disclosures to investors in the relevant jurisdictions and as a result may require such disclosures to all investors depending on the structure of the particular fund."

Another option available to managers is reverse solicitation but like private placement, the devil is in the detail. Even if they use a placement agent and investors come to them, this still falls under the definition of marketing under the directive.



Matt Mulry, partner at Dillon Eustace

"There needs to be a clearly documented paper trail to show that the investor has contacted the manager. Managers should make sure they fall squarely within the definition of reverse solicitation under the laws of the relevant European Member State," says Mulry.

For both private placement and reverse solicitation, managers will need to avail themselves of a multi-advisory solution. They will need advice from lawyers in the European jurisdiction they plan to market into, understand that jurisdiction's interpretation of private placement under the directive, and then engage with their Cayman lawyers to ensure that any updates to offering documents are implemented correctly.

Managers will likely need to engage in a cost-benefit analysis to determine which, if any, European markets are important to their funds.

"For managers who choose to become AIFMD-compliant, are they going to spread those costs across all of their investors? It could be a difficult sell to US and Asian investors who don't see any benefit in the additional disclosure requirements imposed by AIFMD. It boils down to each manager conducting the cost-benefit analysis referred to above with an eye on the needs of their investor base. It may be that we see a split between funds established to target European investors and funds established for the non-European market as a result of the high costs of AIFMD compliance."

Mulry believes that the directive could, initially, make it harder for non-EU managers to market into Europe because without the ability to obtain a marketing passport "they will have to incur significant costs in complying with the private placement regimes of each jurisdiction where they seek to market their funds". ■