

## To sell or not to sell - Distribution possibilities for fund managers under the AIFMD

*Two methods of marketing AIFs, the European marketing passport and the private placement regime, creates three options for distributing AIFs in the EU*

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With the deadline of 22 July 2014 fast approaching the fund industry is at a crossroads. Non-EU alternative investment fund managers ("AIFMs") wishing to continue to market their alternative investment funds ("AIFs") in the EU need to think about how to implement the requirements of the Alternative Investment Fund Managers Directive ("AIFMD"). The new legal provisions underlying the AIFMD are questioning organisational procedures and entire business models. One of the greatest changes under the AIFMD is doubtless the creation of a single market for marketing AIFs to professional investors in the EU and, accompanying this, the implementation of complicated marketing and distribution directives for AIFs. Inconsistent legal structures for private placement within the European Union, which in the past had been regulated by national legislation, are also braced for change. Unlike UCITS, with the AIFMD the focus is placed on the fund manager.



**Michael Sanders**  
CEO and Chairman of the Board  
Alceda Fund Management S.A.

### Fund managers throughout the world affected

This will have consequences not only for managers in the European Union but also throughout the world. Given the rise in demand for solutions under AIFMD from Asia and Australia, Latin America and the US, the directive creates a wide range of new opportunities. The essential question to consider here is: How do foreign managers wish to tap into the European market?

**>> Foreign managers must ask themselves how they wish to enter the European market <<**

### Two marketing methods creates three distribution options

Within a fixed time frame, the Directive makes provisions for two methods of marketing AIFs: the European marketing passport and the National Private Placement Regime (NPPR). This, in turn, is creating three options for fund managers:

Firstly, managers will still be able to apply local and domestic private placement provisions until 2018. The advantage here is that not all compliance regulations have to be fulfilled. At the same time though, a considerable amount of work is involved in specifically preparing the documents and reporting for each market due to the different legal requirements in each country.

The second option is distribution at the investor's initiative – also known as "reverse solicitation". This form of passive marketing and distribution was frequently practised in the past. In the future,

however, it will prove far more difficult to apply this approach since each country has a different way of understanding this process, imposing in some cases extensive sanctions.

Lastly, a fund manager can comply with the entire directive and obtain their own license as an Alternative Investment Fund Manager (AIFM). However, the costs associated with commencing business in the EU and implementing the AIFMD must be borne in mind when considering this option. A more advisable alternative is to assign an external manager as AIFM and concentrate on one's own core business while having all the legal and technical requirements fulfilled by a service provider. In this way, managers from third countries conveniently receive a European passport for their products and are able to distribute these products to qualified investors in compliance with the AIFM provisions.

**With the NPPR due to expire in 2018, this third option for fund managers wishing to market alternative investment funds to EU investors constitutes the only option for further penetrating the European market.**

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