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Cracking the EU Market: AIFMD Pre-Marketing and Marketing Rules for Fund Managers

This brochure provides a practical overview of the marketing and cross-border distribution rules under the Alternative Investment Fund Managers Directive (AIFMD). Understanding the key differences between pre-pre-marketing, pre-marketing, marketing, and the national private placement rules (NPPR) is essential for compliance, especially in fund hubs like Luxembourg.

Pre-pre-marketing

In the early stages of capital raising, pre-pre-marketing activities are essential to building a strong foundation for future success. It involves informal conversations with potential investors without disclosing detailed product information, networking at industry events or conducting market research. By sharing information exclusively relating to the fund managers and establishing credibility within the investment community, the stage is set and allows managers to build early relationships and gauge market interest without triggering regulatory obligations. The success of pre-pre-marketing solely relies on the manager's reputation and proven track record, industry connections and ability to leverage their network to generate excitement and anticipation around the potential fund. This phase is all about creating a buzz and laying the groundwork for more formal marketing efforts.

However, while these activities are not subject to EU rules, discussions that become too specific about the fund or strategy may cross into pre-marketing territory, requiring formal notification. Therefore, it is crucial to navigate this phase carefully to avoid triggering regulatory obligations.

Pre-marketing

Pre-marketing is the stage where fund managers test potential investor interest for a specific fund or investment strategy.

Pre-marketing is regulated in the EU, specifically under the Cross-border Distribution Directive (EU) 2019/1160, implemented in Luxembourg by the law of 12 July 2013 on alternative investment fund managers as amended.

Unlike pre-pre-marketing, this phase involves more structured communication but still non-binding information to prospective professional investors to gauge their interest.

This can include sharing draft term sheets or offering documents, provided, however, that those materials must not enable investors to commit to subscribe to the fund and must clearly state that the information presented therein should not be relied upon and is subject to change. No subscription document, even in draft form, must be shared with prospective investors.

Only EU-authorized fund managers or licensed (MiFID) distributors may conduct pre-marketing.

Fund managers wishing to pre-market to potential investors in Luxembourg or in other EU Member States must ensure that the national competent authority of their home Member State is notified within two weeks of initiating pre-marketing activities.

The pre-marketing notification letter should include details such as the Member State(s) in which the fund manager intends to pre-market, the period during which the pre-marketing takes place, and descriptions of the contemplated activities and investment strategies. More importantly, pre-marketing imposes an 18-month restriction on reverse solicitation in the Member State (or States) concerned. This restriction also implies that any investors contacted during pre-marketing must be onboarded through formal marketing channels to comply with these regulations.

Marketing

Marketing is the final stage of capital raising and refers to the direct or indirect offering or placement of fund units or shares to professional investors. It encompasses all communications and promotional activities initiated by the fund manager, whether carried out directly or through intermediaries.

Under AIFMD, marketing activities are subject to stringent regulations to ensure that investors receive clear, accurate and non-misleading information. Marketing communications must be clearly identifiable as such and must present the risks and benefits of investing in the fund in a clear and prominent manner.

For fund managers managing EU AIFs, the “marketing passport” under AIFMD allows cross-border marketing to professional investors across the EU with a simple regulator-to-regulator notification process. Marketing activities can only start once the relevant notifications have been submitted by the regulator of the Home Member State to the regulator of the host Member State(s).

Although the framework for a marketing “passport” for non-EU fund managers to manage EU AIFs and/or market non-EU AIFs remain unchanged, no step has been carried out to implement it in the AIFMD 2.0.

National Private Placement Regime (NPPR)

Since non-EU fund managers cannot benefit from the marketing passport under AIFMD, NPPR provides an alternative route for those wishing to market their funds within the EU. Unlike the marketing passport, fund managers must register and notify the relevant National Competent Authorities (**NCAs**) in each Member State where they intend to market their funds and comply specifically with each Member State's applicable regulations.

While this may result in a more complex and administratively burdensome process for fund managers, it does provide a viable alternative for those wishing to crack the EU market.

About AKD

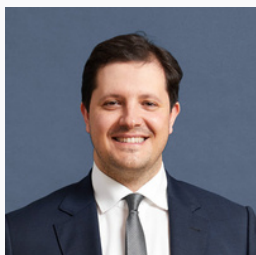
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