AIFMD in Jersey: Marketing into Europe

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The Alternative Investment Fund Managers Directive 2011/61/EU (**AIFMD**) is designed to bring greater transparency and oversight of the investment funds industry in Europe and imposes rules in a number of areas, chief amongst which are reporting and disclosure requirements imposed on fund managers and rules governing their ability to market funds within the EU.

Following the introduction of the AIFMD regime, cross border marketing of Alternative Investment Funds (**AIFs**) within the EU can take place in two ways:

1. **The EU Passport**: AIFMD brought in a passporting regime to allow Alternative Investment Fund Managers (**AIFMs**) to market AIFs to investors based within the EU. Currently only EU domiciled AIFs can be marketed in this way, and only by EU domiciled AIFMs. AIFMD made provision for "third countries" to be granted the same passporting rights as EU member states, subject to certain conditions being met (**Third Countries**). ESMA published its assessment of potential "first wave" Third Countries and along with Guernsey and Switzerland found that were no significant obstacles to Jersey becoming a Third Country jurisdiction. The EU Commission has not yet pressed ahead with the implementation of the third party passporting regime, but in light of Brexit this is likely to gain greater focus and the indications are that if and when the regime is put in place Jersey will be amongst the first non-EU countries to be granted passporting rights.

2. **National Private Placement Regimes**: Unless both the AIFM and the AIF are domiciled in the EU, AIFMs are required to market AIFs to professional investors in the EU by complying with each member state's national private placement rules (**NPPRs**) and by complying with certain other disclosure and reporting requirements imposed by the AIFMD (which are covered by Jersey's own domestic AIFMD regime, more on which below). To allow AIFMs to access the NPPR regimes the regulator in their home jurisdiction must also have a bi-lateral cooperation agreement with the EU member state in which they wish to market. The Jersey Financial Services Commission (the **JFSC**) has such an agreement with their counterparts in 27 EU member states. Accessing European capital through NPPRs is a tried and tested method for Jersey funds and managers as at December 2017 there were 149 Jersey domiciled AIFMs and 291 Jersey AIFs marketing into the EU using NPPRs an increase year-on-year of 17% and 13% respectively.

Jersey's AIFMD Regime

On 22 July 2013 Jersey was the first potential Third Country to implement its own opt-in AIFMD regime which mirrors the requirements of the AIFMD in Europe.

Jersey's AIFMD regime also makes provision for "sub-threshold" AIFMs, which under AIFMD are subject to lighter touch reporting and disclosure requirements. To qualify as a sub threshold AIFM a manager must manage leveraged assets valued at less than €100m or manage unleveraged and closed-ended assets valued at less than €500m. If an AIFM meets these criteria it will need to complete a simple application process with the JFSC to be approved as a "sub-threshold AIFM service provider". It is worth noting, however, that whilst Jersey law and the AIFMD regime generally impose less onerous requirements on sub-threshold AIFMs, some NPPR regimes do have additional "gold plating" requirements that must be complied with.

Jersey's Regulatory Regime

Jersey Private Fund

Where the AIF is a Jersey Private Fund (**JPF**) it must apply to the JFSC for an AIF Certificate under Jersey's Alternative Investment Funds (Jersey) Regulations (the **AIF Regulations**) and adhere to the Jersey AIF Codes, which broadly cover areas such as disclosure and reporting requirements, asset stripping and notification requirements to the JFSC. If the AIFM is Jersey domiciled it will either (a) need to hold a licence granted by the JFSC pursuant to the Financial Services (Jersey) Law 1998 (the **FSJ Law**) as a provider of AIF Services Business; or (b) if it is a sub-threshold AIFM (the test for which is set out above) it will need to be approved by the JFSC.

Expert, Listed, Eligible Investor and Unclassified Funds

Funds that fall into any of these categories will be subject to regulation under the Collective Investment Funds (Jersey) Law 1988 and their service providers will be regulated under the FSJ Law, regardless of whether or not they plan to market into Europe. The only additional regulatory burden imposed on the AIFMs of these fund's is that if they wish to market the fund to investors in the EU, then they will be required to comply with the AIF Codes, notify the JFSC of their intention to market to EU investors and comply with the NPPR's of the relevant member states.

Unregulated Fund

Unregulated funds cannot be marketed into the EU - they will need to convert to become one of the Fund types listed above before they can be marketed to EU investors.

Conclusion

As one of the leading global jurisdictions for funds Jersey offers a tried and tested method of marketing to European investors under NPPR's, and a robust and internationally recognised regulatory framework. The opt-in nature of Jersey's AIFMD regime also means that where European investors are not being targeted, managers have the flexibility to opt out of AIFMD compliance, something they could not do if they were EU domiciled and subject to the full AIFMD regime.

Looking ahead, the future looks bright for the Jersey funds industry. The number of AIFs and AIFMs registered in Jersey has increased steadily since 2013 and shows no signs of slowing. If Jersey does become a Third Country, managers will enjoy even more flexibility when marketing to EU investors.

If you have any questions on marketing into Europe or are considering using Jersey as a base to market a fund into Europe, please get in touch.