

Overview

Marketing in Europe is governed by a number of different regulations, many of which are overlapping, therefore it is important to be clear what applies to your activities and make sure you can approach potential investors or hold road shows in the countries you wish to.

A selection of relevant regulations is offered below for consideration. Please note that these are only an overview and there are many technicalities and conditions for marketing. Failure to abide by requirements is often a criminal offence and can render certain contracts invalid. If you'd like to discuss marketing compliance, please contact us directly.

FCA Financial Promotions Regime

The UK has long standing regulations that govern how and to whom marketing can be carried out. The headline rule is that all marketing documents must be 'clear, fair and not misleading'; with the burden of proof for the latter becoming increasingly stringent if you are marketing to retail investors. If you are in retail market, there are prescribed documents that you have to give potential investors (please refer to UCITS below). The majority of investment firms will be focussing on professional investors but still have to ensure that they have internal procedures in place to ensure that all marketing documentation meets the regulatory requirements.

We can offer Financial Promotions assistance ranging from establishing your internal procedures, providing

training and conducting reviews of documentation as needed.

Private Placement

Most units or shares of hedge funds or fund of funds are not listed; therefore they are offered for sale to potential investors via the national private placement regimes currently available around Europe. Please note that not all European countries have a private placement regime in place, meaning that your interaction with investors domiciled in certain jurisdictions can only be via 'reverse solicitation' methods. Please contact us if you'd like to know more.

AIFMD is designed to phase out the existing private placement regimes by 2018, therefore a longer term marketing strategy for Europe will need to be considered prior to that date. This could include applying for passports referenced below.

Passports

One competitive advantage offered to European AIFMs by AIFMD is the marketing passport. This enables European managers to apply to their home state regulator for a passport to market to other European jurisdictions. If granted, there are no restrictions on marketing in the nominated countries and business there can continue as normal. This is not currently available to non-EU managers, who will have to wait until 2015 for clarity on whether they will be given access to the same marketing passport option.

UCITS

The marketing of UCITS funds is governed its own Directives, which

is prescriptive in the documentation, regulatory approvals and permissions. This is intentionally demanding in nature so that those managers who wish to offer a product to retail investors must have the appropriate infrastructure in place to do so.

Switzerland

Switzerland, while not part of the EU, is part of the European Free Trade Area ('EFTA') and has a substantial presence in investment management offerings. Consequently, Switzerland is introducing domestic legislation, which will run in parallel to AIFMD in some respects. It shares a focus on marketing activities, to the extent that from end of February 2015, it will not be possible to market to Swiss unregulated prospects without the aid of a Swiss Foreign Collective Investment Scheme Representative and Paying Agent.

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