The Impact of the Alternative Investment Fund Manager's Directive

The Alternative Investment Fund Manager's Directive (AIFMD) has been introduced to provide a common regulatory regime for managers of non-UCITS funds, creating a single European market in this area. The AIFMD is the first time that private equity has been subject to pan-European regulation. The directive is designed to create a genuine single market for alternative investments, which includes private equity.

Understanding a new regulation and more importantly its impact can be challenging, particularly when confusion exists around the detail. Acquisition International speaks to some of the leading players in the alternative investment arena to discuss their thoughts on the AIFMD.

Samuel Won is the Founder and Managing Director of Global Risk Management Advisors, Inc. ("GRMA").

AI: What are some of the common misperceptions surrounding AIFMD?

GRMA: many funds are significantly underestimating the work required for AIFMD. These funds are incorrectly assuming that because they are in the "transition period" they have sufficient time to satisfy the many requirements (e.g. organizational, remuneration, transparency, risk management, etc.). Many non-EU funds believe they can finesse many of the requirements by giving up active marketing and relying on passive marketing and reverse solicitation from European investors. In our view, this approach is flawed because we believe European regulators can be expected to adjust the rules so that EU funds are not placed at a competitive disadvantage versus their non-EU counterparts with regards to the AIFMD requirements. Ultimately, what many funds are missing is that the requirements outlined in AIFMD represent a new threshold that funds will be expected, by investors as well as regulators, to meet to be considered institutional-quality with regards to risk management. Therefore, in our opinion, even funds that are deemed to be non-EU AIFMs will need to comply with most if not all of the same requirements as EU AIFMs.

AI: What do you believe are the greatest operational challenges with regards to implementing AIFMD?

GRMA: most funds do not presently do much of what is required by the new directive. Consequently, the greatest operational challenge for funds is to put in place the extensive infrastructure, processes, controls and governance associated with the requirements. For example, a very substantial effort is necessary for most funds to put in place the infrastructure and processes for risk measurement and monitoring, develop risk management policies and procedures and independent risk management governance.

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AI: What do you believe are the major similarities and differences between AIFMD's ESMA reporting and Form PF?

GRMA: there are many similarities between the transparency and risk reporting requirements in the AIFMD's ESMA reporting and what is required for Form PF. Both European and U.S. rules require reporting of detailed risk profile information to the regulators on a periodic basis. However, many of the questions and assumptions behind the questions in the ESMA form and Form PF are substantively different, and therefore funds would be wise not to assume that they can merely "map the data" in one form to the other. Also, in the ESMA, the European regulators were wise enough not to allow funds to evade answers by answering "relevant but not tested."

AI: What do you recommend that firms do to best prepare themselves to be in full compliance with AIFMD?

GRMA: we strongly recommend that funds should start by performing a gap analysis to understand and determine where they have the capabilities and where they lack the necessary infrastructure, processes, controls and governance. We believe that this type of analysis will help a fund to identify not only the common areas of intersection among the various reporting and transparency requirements but also the areas where there are distinct differences that may require a new approach and/or processes. Overall, we strongly advise funds to take a unified approach for all of their risk-related regulatory reporting and investor-driven transparency requirements (e.g. ESMA Form, Form PF, OPERA, etc.).

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