Fund Manager Briefing: Briefing and Capital Raising in Europe

Monday, March 18, 2019

March 29th is Brexit Day unless extended. While extension is what the UK Parliament has voted for, the EU approval process and the length of the extension (if any) remains to be seen. Faced with this uncertainty as to when Brexit Day will take place, it is worth reviewing what the effect will be on US based private fund managers.

Take Aways: alternative investment funds currently marketing into the UK by means of a passport will have to notify the UK Financial Conduct Authority (the “FCA”) before Brexit Day that they intend to continue to rely on their existing passports through December 31, 2020, if there is an agreed upon Brexit Deal. The **filing to secure continuity of marketing for existing funds - assuming a deal is struck that includes a transition period - must be made by March 28th.**

But what if there is no Brexit Deal and the UK “crashes out”? The UK intends to implement a Temporary Permissions Regime to hedge against this scenario that is expected to last until for a maximum of 3 years. It applies to funds that have passports in place.

What if your fund does not have a passport before Brexit Day? You will need to utilize the UK’s national private placement regime that will permit marketing to professional investors.

Background

European Union member states implemented the Alternative Investment Fund Manager Directive in July 2013, launching a pan-European professional investor marketplace. Since 2013, US fund managers have embraced the AIFMD passport marketplace, launching funds in Europe and using the AIFMD passport to market a single fund throughout the European Union. In many instances, UK investors have often been a critical component of fund raising by US managers.

Brexit will bring to an end AIFMD as we have known it, and will create a bi-furcated market. In anticipation of a hard Brexit, the FCA issued and UK Treasury has passed into law the **Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018** that go into effect on Brexit day.

Conclusion

The UK has two competing plans at the ready, either the Temporary Permissions Regime for a hard Brexit or a transition period for a negotiated Brexit.

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