

# Think Globally, Act Locally: Convergence of Local Regulatory Requirements in Global Fund Products

By Barbara Nelligan and Lisa Shea

**“T**hink Globally, Act Locally.” We’ve heard it before. The phrase is used in many contexts, including “town planning, environment, education, mathematics, and business.” With the convergence of regulatory requirements in the global investment management world, this phrase takes on a new dynamic for the funds industry. The world is changing. Investment Managers are increasing their global presence, taking proven strategies and launching products tailored to meet the needs of the market in different jurisdictions. Advances in technology have made it possible to reach around the world, and the global model is fast becoming the norm rather than the exception.

Regulators have been vigilant in their efforts to keep pace, and regulatory bodies across the globe continue to propose and pass rules designed to protect the investing public during times of rapid change. The increased focus on oversight of the asset management business, in the wake of challenges over the past several years, has resulted in a number of major reform efforts. Our industry faces the challenges of ensuring adherence to changing regulations not only in our home locations, but around the world. We must think globally, but act locally. What does that really mean?

One example is the European Union’s Alternative Investment Fund Manager’s Directive (AIFMD). AIFMD seeks to regulate entities involved in the management of Alternative Investment Funds (“AIF”). The directive applies to EU investment managers who manage AIFs (both EU and non-EU domiciled), non-EU investment managers who manage EU AIFs, and non-EU investment managers, which market any AIF (both EU and non-EU domiciled) in the European Union.

AIFMD may, at a glance, not appear to have any impact to a US Registered mutual fund. After all, 40 Act funds are not “alternative investments.” They are regulated products with a robust oversight and compliance structure. When we look deeper, however, there are potential implications for European fund managers with

40 Act products.

AIFMD’s definition of an AIF is broad, covering “all collective investment undertakings, including investment compartments thereof, which raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors and which are not UCITS.” Since the directive defines any fund that is not authorized as a UCITS fund as “alternative” — including 40 Act funds — a 40 Act fund managed by an EU based Investment Manager would be considered an AIF, and the EU Investment Manager would be subject to the rules.

This raises an issue of serious concern as it creates the potential for inconsistencies between AIFMD requirements and the organizational and regulatory requirements of the jurisdictions in which the non-EU fund (identified by the directive as an AIF) is registered, like those of the Investment Company Act of 1940. While concerns have been raised by local governing and industry bodies and much work has been done to ensure that rules are appropriately tailored to accommodate circumstances such as 1940 Act funds, the directive remains complex and ensuring compliance in each local jurisdiction requires intense and thorough review.

US Managers with unregistered funds relying on registration exemptions must also be on alert. For managers who plan to explore new avenues for General Solicitation under Rule 506(c), careful consideration must be given to any communication methods. Could any offering made under the more flexible terms of 506(c) be construed as “marketing” in the EU, thereby subjecting the Manager to



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AIFMD? AIFMD can also apply to non-EU Alternative Investment Fund managers who market an AIF in the European Union — regardless of whether the funds are EU Alternative Investment Funds, or non-EU Alternative Investment Funds. So we’ve come full circle, back to 40 Act funds, which may be in scope, even if managed by a US advisor, if they are marketed in the EU.

AIFMD is merely one example of a “local” regulation, which will have global impact. Now, more than ever, it’s critical for Funds and Investment Advisers to assess the impact of new and proposed rules in any jurisdiction on their global business, across their entire product line, and to examine their obligations through more than one lens. Rules, reporting requirements, and compliance programs to meet obligations may be very similar, but are frequently proving not to be the same. We must consider where regulations intersect, overlap, or actually conflict.

As the regulatory environment becomes more complex, we can hold out hopes that regimes will seek to remain aligned and that cooperation among regulatory and governmental entities will prevail — thus simplifying the path to compliance — but we must always stay alert, informed, and engaged in the evolution of our world.

Funds and Investment Managers would be wise to seek out expert counsel on the intricate web of regulatory requirements. Service providers have emerged to provide technology and support solutions to help the industry meet data collection and reporting requirements. The costs of compliance will be increasingly high, but the risk of penalties resulting from non-compliance is real. In order to stay in step with the convergence of regulatory requirements in different jurisdictions, Managers and Funds must truly “Think Globally, Act Locally.”

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