Next Monday, July 22, 2013, the AIFMD must be implemented in the national laws of each Member State of the European Union ("**EU**"). The AIFMD regulates marketing[1] and management of alternative investment funds ("**Funds**") by investment managers ("**Advisers**") in the EU. Starting July 22, 2013, through at least July 2015, the AIFMD will apply differently to EU and non-EU Advisers: (a) an EU-wide regime allows EU Funds and Advisers to market throughout the EU without needing to comply with each Member State's private placement regime (the "**Passport Regime**"); and (b) a Member-State-specific regime requires non-EU Advisers and Funds to understand and comply with the local private placement regulations of each Member State where marketing will occur.

Our letter dated April 11, 2013 (the "**April Letter**"), addressed general compliance and reporting requirements for non-EU Advisers. Since our April Letter, a number of Member States have updated their private placement regulations and announced rules for AIFMD compliance. This letter addresses recent developments and items to consider in preparation for compliance on July 22, 2013.

We have worked with counsel in Europe to provide a comprehensive plan for complying with the AIFMD and the private placement regulations in each Member State. Please consult us if you would like our assistance to work with such counsel regarding your compliance with each Member State's private placement regime and the AIFMD.

1. One-Year Transition Period. After July 22, 2013, any non-EU Adviser marketing a non-EU Fund in the EU will be subject to the range of reporting requirements discussed in section 3(a) of our April Letter. Many non-EU Advisers, however, may be able to rely on a twelve-month transition period (the "**Transition Period**") that eases the burdens of full compliance. Advisers may rely on the Transition Period only in Member States that have Transition Period legislation. Unfortunately, it is expected that fewer than one-third of the Member States will have final legislation before July 22, 2013. The U.K., Ireland, Germany, the Netherlands, Sweden, and Luxemburg have proposed or enacted Transition Period legislation, but have split about how it will apply to non-EU Advisers.

The U.K. was the first Member State to make the Transition Period available to non-EU Advisers. The U.K. Transition Period, which is generally permissive for Advisers, applies to non-EU Advisers that have managed at least one Fund that was "marketed" in the European Economic Area (the "**EEA**") before July 22, 2013. The U.K. announced that for "marketing" to have occurred, a Fund's interests must have been formally offered to or placed with an EEA investor. Merely providing draft offering documents is insufficient. Any Adviser that has formally marketed a Fund in the EEA before July 22, 2013, will have until July 22, 2014, to comply with the AIFMD in the U.K. with respect to all managed Funds, including Funds launched after July 22, 2013.

Unlike the more expansive U.K. Transition Period, Germany recently announced a more limited Transition Period for non-EU Advisers. Through July 22, 2014, non-EU Advisers may continue to market under existing private placement rules only the Funds that they marketed in Germany before July 22, 2013. As a result, new Funds and Funds that were not marketed in Germany will not benefit from the Transition Period in Germany.

As a result of the differences in Member States' Transition Periods, Advisers should review each Member State's regulations to confirm whether a Transition Period is allowed and the conditions that apply. The transition rules exempt only compliance with the AIFMD, and any Fund relying on the Transition Period must nevertheless understand and comply with the private placement regulations in the applicable Member States.

2. Reverse Solicitation. Many Advisers may attempt to rely on the so-called "reverse solicitation" exception ("**Reverse Solicitation"**). If a non-EU Adviser complies with Reverse Solicitation, the requirements of the AIFMD do not apply. Reverse Solicitation depends primarily on whether the Adviser or the investor initiates contact. If the investor initiates contact, subsequent contact by an Adviser may be permissible as Reverse Solicitation. Published regulations have generally taken a narrow view of Reverse Solicitation, and regulators have announced penalties for violators. For example, the U.K. announced that unregistered marketing would be a criminal offense, entailing possible fines and imprisonment, and that investors may recover money invested and losses sustained. As a result, Advisers should approach Reverse Solicitation with caution.

Reverse Solicitation under the AIFMD is a new concept that will continue to evolve as regulatory authorities apply it to real-world fact patterns. As a result, any advice regarding how various regulatory authorities will define Reverse Solicitation is based on the limited information available to date. Nevertheless, the following are some key action items for Advisers that intend to rely on Reverse Solicitation.

1. Before July 22, 2013, Advisers should inform existing EU investors in Funds that they will not provide information about future Funds except on the investors' affirmative request. Written confirmation regarding such investor requests should be documented and maintained.
2. Advisers should carefully review investor lists and other contact lists containing EU investors before sending

information to such investors to ensure that documentation exists regarding how each relationship was established. Commentators have split on whether Advisers need to trace each relationship to its inception. Some commentators have argued that if an Adviser originally initiated contact with a potential investor, any future communications are tainted, regardless of the passage of time or any attempts to cure the taint. Others have argued that Advisers can cure any issues by ensuring that, with respect to communications after July 22, 2013, no active marketing takes place unless an investor has requested more information regarding a Fund. We expect more clarity on this issue as regulatory authorities begin to address common fact patterns.

3. The U.K. announced that a confirmation from an investor that the offering or placement of a Fund's interests was made at the investor's initiative should normally be sufficient to demonstrate that Reverse Solicitation applies, unless such representation was obtained to circumvent the requirements of the AIFMD. Such representation must be obtained before offering or placing a Fund's interests. Advisers that seek to rely on Reverse Solicitation should therefore ask investors for such documentation before formally offering or placing interests. Whether this will be sufficient in other Member States depends on the legislation enacted (or to be enacted) in each.
4. The U.K.'s relatively narrow view of marketing may imply that Advisers may have preliminary generic discussions with investors without offering interests in specific Funds, and send formal offering documents only on request by an investor. Advisers should, however, be careful about any strategy that pushes the bounds of marketing; many Member States have viewed the AIFMD as a means to regulate more closely alternative investment businesses, and may be likely to disfavor circumventing the AIFMD through Reverse Solicitation.

An Adviser that complies with the Reverse Solicitation exception must also review the private placement regime of each potential investor's Member State to ensure that such Member State has not elected to regulate the sale or placement of interests in a Reverse Solicitation.

3. <u>Private Placement Regimes</u>. A non-EU Adviser that cannot rely on Reverse Solicitation may nevertheless market in the EU (at least until September 2018) subject to the private placement regime of each Member State where marketing will occur. If the non-EU Adviser is not relying on an applicable Transition Period, the Adviser must also comply with AIFMD reporting requirements discussed in section 3(a) of our April Letter. To comply with the applicable private placement regimes, an Adviser should (a) identify the Member States where its marketing activities will occur, (b) determine what Transition Periods apply, and (c) determine whether any additional reporting or compliance actions are required. The range of local private placement regulations announced to date is fairly broad. For example, the U.K. announced that it does not intend to impose further private placement obligations beyond those in the AIFMD, while Germany has announced fairly robust registration, review and compliance regulations that include a two-month review period for any proposed marketing, the appointment of an independent depository, and enhanced investor and regulatory reporting requirements.

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This letter only generally summarizes action items to take in preparation for the July 22, 2013, effective date for the AIFMD, is not intended as specific or complete advice, and is subject to change as the regulations develop. We do not provide legal advice regarding EU matters, but can assist you in engaging local counsel. For further assistance, please contact John Broadhurst, Carolyn Reiser, Neil Koren, Jim Frolik, Christina Hamilton, Joan Grant or David Suozzi.

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[1] Marketing is defined broadly and covers any direct or indirect offering or placement, at the initiative or on behalf of an Adviser, of a Fund's interests with investors domiciled or with offices in the EU.