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Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
Cross-border distribution of funds

Additional Legal Reference
Directive (EU) 2019/1160

Subject Matter
Whether the rules governing pre-marketing, which are set out in Directive (EU) 2019/1160 on cross-border distribution of funds, apply to non-EU AIFMs.

Question

Are non-EU AIFMs allowed to carry out pre-marketing activities pursuant to Article 30a of the AIFMD?

ESMA Answer

26-05-2023

Original language

[ESMA34-32-352 Section XVII Q&A 1]

No, Article 30a of the AIFMD does not cover premarketing activities by non-EU AIFMs. Therefore, non-EU AIFMs should not be allowed to carry out pre-marketing activities pursuant to the AIFMD. However, national laws, regulations and administrative provisions may allow non-EU AIFMs to carry-out pre-marketing activities at national level and where this is the case, non-EU AIFMs do not benefit from a passport allowing them to carry out these activities in other Member States.

In line with recital 12 of Directive (EU) 2019/1160, such national laws, regulations and administrative provisions should not in any way disadvantage EU AIFMs vis-à-vis non-EU AIFMs.