

# JERSEY: A MODEL FOR EQUIVALENCE?

The debate in relation to the marketing of third country funds under the draft AIFM Directive has resulted in two principal diverging viewpoints:

- some favour an EU-wide marketing passport only for EU-domiciled managers and funds compliant with the AIFM Directive, with third country-domiciled funds marketable only on the basis of private placement and regulatory co-operation arrangements with individual EU Member States; but
- some can conceive of an EU-wide marketing passport for third country-domiciled managers and funds if their home regulation is judged “equivalent” under the terms of the AIFM Directive.

Concern has been expressed in some quarters that EU investors should be protected from the risks posed by sophisticated but under-regulated third country managers and/or their investment products, and this concern is well understood. The purpose of this article is to demonstrate how, in framing its relationship with third countries, it is important that the EU recognises that some third countries can already be regarded as proponents of best practice across a wide range of international standards and, as such, funds and managers domiciled in those countries pose no such risk.

In granting passports to reward third countries complying with an equivalence regime, the EU can achieve two valuable results for the global investment community: it can encourage third countries globally to “raise their game” in attaining and maintaining high standards, and it can reinforce the important on-going assessment work of international supervisory bodies such as the OECD, IOSCO and FATF (see below).

Subjecting all third countries, no matter how well-regulated, to diverging state-by-state private placement and co-operation arrangements, would introduce levels of complexity and uncertainty to the marketing of third country investment products which would be perceived by third countries as an obstacle, not a reward. Global economic growth forecasts also suggest that this would not serve the EU economy nor EU investors well, particularly at a time when ageing populations are seeking higher pension fund returns. Such arrangements would also place a significant continuous burden on the supervisory bodies of each EU Member State to police the fitness of all third countries.

The question then arises: if an EU-wide marketing passport were to be offered to third country funds, what might “equivalence” look like and how might it be measured? By demonstrating its commitment to international regulatory best practice, Jersey, as a leading



partner to EU real estate and private equity fund promoters and investors, offers a model of what a “pass-portable” third country might look like:

- Jersey has already been regulating its investment funds and fund service providers (such as managers, depositaries, investment advisors and administrators) for over twenty years;
  - Jersey was among the first jurisdictions to become a full signatory to the IOSCO Multinational Treaty, which establishes guidelines for broad multinational regulatory co-operation with information gathering;
  - Jersey is in the process of introducing codes of practice for funds designed to ensure compliance with IOSCO’s published Objectives and Principles of Securities Regulation;
  - Jersey has a wide and growing range of bilateral memoranda of understanding with other regulatory authorities;
  - the IMF’s 2009 Financial System Stability Assessment reported that Jersey is in the top division of international finance centres, classed as being compliant or largely compliant with 44 of the 49 general Financial Action Task Force (FATF) recommendations (a higher score than all EU Member States and G20 nations recently assessed by the IMF), as well as very high levels of compliance with Basel and International Association of Insurance Supervisors core principles;
  - the Jersey Financial Services Commission assesses the track record and “home regulation” of fund promoters before they are permitted to use Jersey regulated structures; and
  - Jersey is fully committed to transparency in tax matters: it has a comprehensive and growing network of tax information exchange agreements (TIEAs) which ensured that Jersey was amongst the nations immediately placed on the OECD’s “white list” of jurisdictions having implemented internationally agreed tax standards. Jersey has also been invited by the French presidency of the OECD to be Vice Chair of the Peer Review Group of the OECD’s Global Forum, and has volunteered to be one of the first candidates for review of its TIEA network, regulation and policies as well as, critically, the effectiveness of their implementation.
- Compliance with objective measures such as these could

be assessed by a centralised EU body such as CESR, to determine whether the required benchmark for passport “equivalence” is met by a third country.

With 13,000 finance industry professionals adhering to the highest international standards of regulation and fiscal co-operation, Jersey is a “centre of excellence” in the field of alternative investment funds. It is a third country near the heart of Europe which already offers a safe harbour for EU investors and a secure portal for in-bound and out-bound EU alternative investment.

Granting an EU-wide marketing passport to deserving third countries like Jersey would stand as a fitting reward for their long-standing commitment to international regulatory best practice and an encouragement to other countries to make the same commitment.

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