

# Waystone – bringing certainty to your distribution

The Cross-Border Distribution Framework (CBDF) is the result of discussions that began in the EU in July 2018. The intention was to create a series of measures intended to reduce regulatory barriers and harmonise the marketing and distribution of funds across the EU, ultimately reducing fund costs for investors and enhancing the transparency of local regulatory processes and fees. Whether the legislation fully achieves its intentions will be determined by how each individual member state interprets the directive.

Reflecting on the weeks since the CBDF came into effect, it is interesting to assess how its approach has informed wider planning, even where focused solely on one principle, such as pre-marketing for AIFs (Alternative Investment Funds). It will be of further interest to observe how the drive to standardise activities across fund types works in practice, as firms adjust marketing materials and communications in the run up to the ESMA guidelines becoming effective on 2 February 2022.

Broadly, harmonising pre-marketing for AIFs is a clear improvement of the previous, fragmented, approach. The expansion of the pre-marketing definition to include established, but not passported, funds is a welcome development, allowing a test of investor interest without incurring potentially unnecessary ongoing costs. Potential challenges for asset managers and distributors may occur with the reduction in entities permitted

to pre-market and the requirement to closely track subscriptions linked to pre-marketing activity, although with careful planning these challenges are not insurmountable.

While pre-marketing changes focus on AIFs, the ‘high level principles’ and ESMA guidelines highlight convergence by immediately applying equally to AIFs and UCITS. Remember, however, that member states can apply the guidelines in differing ways (for example, requiring regulator pre-approval of materials, or translations of materials for certain investor types). The process of building marketing communications for EU-based prospects and investors is therefore likely to be in flux during the autumn until all member states have outlined how they will comply with the guidelines. We therefore expect to see ongoing refinements to communications up to February 2022 when the ESMA guidelines come into effect.

In summary, as with previous regulatory changes, we anticipate there will be local regulatory divergence in the legislation’s application, bringing nuances not previously considered on a country-by-country basis. We know our asset manager partners will be looking to practically meet the new requirements as they arise, and Waystone is here to provide certainty to our clients and ensure they remain on the right side of distribution at all times. —

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