

**Schulte Roth&Zabel**

EU Regulatory Update  
for US Private Fund Managers

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# Introduction and Topics

- Why now?
- Distribution of funds in the EU
  - AIFMD
  - CMU initiative
  - PRIIPs
  - MiFID II
- GDPR

# Marketing Alternative Investment Funds

# National Private Placement Regimes

- Member States (MS) have discretion to allow marketing of non-EU funds to *professional investors*
  - Not all MS have them
  - Registration or prior approval
  - Investor disclosures – initial and periodic
  - Annual report and remuneration disclosure
  - Reporting to the regulator (similar to Form-PF)

# What Is a Professional Investor?

- Bank, pension fund, fund of funds, large corporate
- What is an elective professional or “opt-up”?
- What about HNWs?
  - EUR 500,000 in investable assets, *plus*
  - One year experience as investment professional
- Local regimes govern offers to non-professional investors

# How Can I Get a Passport?

- EEA funds
- “AIFM for hire” platforms
- Status of third-country equivalence
- What happens in July 2018?

# Will CMU Help?

- “Pre-marketing”
- De-registration under NPPRs
- UCITS passporting



# PRIIPs Regulation

# What Are PRIIPs?

- A fund = packaged investment product
- PRIIPs apply when the fund is offered to *retail investors* (i.e., non-professional)
- EU private banks and fund of funds investors
- What is a KID?
  - Summary risk indicator
  - Performance scenarios
  - Costs and charges (incl. implicit trans. costs)

# MiFID II

# Does MiFID II Affect Distribution?

- Advising, selling, portfolio management
- Who is affected:
  - Private banks
  - Fund and managed account platforms

# What Are the Key Requirements?

- Unbundling of dealing commission and payments for research
- Best execution
- Costs and charges
- Product governance

# General Data Protection Regulation

# Key Facts

- Takes effect on May 25, 2018
- Replaces and extends the existing EU data protection regime
- What is personal data?
- What is processing?
- What is a data subject?

# What Is in Scope?

- Processing of personal data in the context of:
  - EU establishment
  - Offering of goods or services to EU data subjects
  - Monitoring of behavior of EU data subjects



# What Is Offering Goods and Services?

- Apparent intention to offer?
- What is your current investor base?
- What does your website say?
- What do your offer documents say?
- Does it matter if the fund is registered under AIFMD NPPR?

# What Is Monitoring?

- Tracking on the internet with a view to profiling (to make decisions or analyzing/predicting personal preferences, behavior and attitudes)
- Consumer questionnaires
- Big data products
  - Are you receiving personal data?

# Controller vs. Processor

- Controller determines the purpose and means of processing
- Processor processes data on behalf of a controller

# What Does It Mean to Be in Scope?

- The basis and purpose for processing
  - Consent
  - Legal obligation (NB: EU or MS law)
  - Legitimate interests
- Data processing principles
  - Data minimization and storage limitation
- Appointing processors
- Security of processing

# Data Subjects Have Rights

- Information
- Access
- Rectification and erasure (right to be forgotten)
- Restriction of processing
- Right to object to direct marketing
  - NB: E-privacy law
- Data breach notifications

# GDPR – Impact on Funds

- Administrators and other service providers
- Data sharing
- Data transfers outside the EEA
- Privacy notices
- Distribution lists