



Pre-marketing in Europe

A cross-border view of permitted activities and those to avoid

March 2017

Understand the differences in approach across Europe with our colour-coded summary. This document aggregates and summarises one aspect of content extracted from our **Rulefinder Marketing Restrictions – Asset Management** service.

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PRE-MARKETING IN EUROPE

10 MARCH 2017

Note: the data in this document is extracted from underlying memoranda provided to aosphere LLP by local counsel in each jurisdiction. While this document was compiled on the date stated above, the data for each jurisdiction speaks as of the relevant date upon which the relevant memorandum was provided by local counsel to aosphere LLP.

BACKGROUND & SCOPE

Definitions of AIFMD Marketing and Pre-Marketing

In this document, **AIFMD Marketing** refers to the definition of marketing” under Article 4(1)(x) of the AIFMD as follows:

“a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the Union”.

Active marketing/promotional activity which does not amount to AIFMD Marketing is referred to as **Pre-Marketing**.

Differing Interpretations across Europe

EEA Member States take differing views on exactly what activities fit within the definition of Pre-Marketing and whether indeed Pre-Marketing is permitted at all.

The distinction between AIFMD Marketing and Pre-Marketing is important since:

- (i) the various conditions and requirements deriving from Article 31, 32, 36 or 42 of the AIFMD (as applicable); and
 - (ii) the requirement to make/obtain a notification/approval with the relevant regulator before commencing AIFMD Marketing,
- do not need to be fulfilled in respect of Pre-Marketing.

Local Law Compliance



Note that even where marketing activities constitute Pre-Marketing they will still need to be conducted in compliance with other local regulatory requirements in a specific member state of the EEA.






AUSTRIA			
Pre-Marketing Possible?	Austrian interpretation of “Pre-Marketing”	Permitted Pre-Marketing includes circulation of:	Activities to avoid (i.e. because will trigger AIFMD Marketing):
<p>Marketing activities may amount to Pre-Marketing where:</p> <ul style="list-style-type: none"> they consist of steps taken to register the interest of the prospective Austrian investor the information disseminated would not enable the investor to make an investment decision. <p>The above is based on local counsel’s interpretation rather than Austrian law or guidance issued by the regulator.</p>	<p>Presentations/term sheets (whether in draft/final form) provided that the information therein should not enable the investor to make an investment decision.</p> <p>(Potentially) generic materials which refer to investment strategies/ideas without naming the fund. The information therein should not enable the investor to make an investment decision.</p>	<p>Provision of offering document, subscription documents or constitutional documents of the AIF (whether in draft or final form).</p>	
BELGIUM			
Pre-Marketing Possible?	Belgian interpretation of “Pre-Marketing”	Permitted Pre-Marketing includes circulation of:	Activities to avoid (i.e. because will trigger AIFMD Marketing):
<p>The AIFM Law did not clarify the position regarding Pre-Marketing and the FSMA has not provided any guidance. Local counsel’s interpretation, based on previous approaches of FSMA, is that there is no distinction between AIFMD Marketing and Pre-Marketing.</p>	N/A	<p>Any active marketing activities prior to making the relevant notification in order to conduct AIFMD Marketing.</p>	
CZECH REPUBLIC			
Pre-Marketing Possible?	Czech interpretation of “Pre-Marketing”	Permitted Pre-Marketing includes circulation of:	Activities to avoid (i.e. because will trigger AIFMD Marketing):
<p>AIFMD Marketing has been widely defined in the Czech Republic and therefore all active marketing is likely to constitute AIFMD Marketing. There is therefore no Pre-Marketing exemption under Czech law.</p>	N/A	<p>Any active marketing activities prior to making the relevant notification/registration in order to conduct AIFMD Marketing.</p>	

DENMARK

Pre-Marketing Possible?	Danish interpretation of “Pre-Marketing”	Permitted Pre-Marketing includes circulation of:	Activities to avoid (i.e. because will trigger AIFMD Marketing):
<p>Marketing activities will amount to Pre-Marketing where:</p> <p>(i) the AIF, to which the Pre-Marketing relates, is not yet established,</p> <p>(ii) no PPM, prospectus or similar offering document has been prepared in respect of the AIF, and</p> <p>(iii) it is not yet possible for the potential investors to commit to acquiring interests in the AIF.</p> <p>The above is based on Section 3 of the DFSA AIFMA Q&A.</p>		<p>Draft presentations/term sheets on the basis that key terms of the offering would still be up for negotiation. The AIF in question must not yet be established.</p>	<p>Any marketing activities in respect of an AIF that is established and in which potential investors can commit to invest.</p> <p>Distribution of a draft offering document, particularly where the draft is in an advanced stage.</p> <p>Generic discussions which refer to characteristics (e.g. investment strategy) but not the name of the fund, where the AIF is already established.</p>

FINLAND

Pre-Marketing Possible?	Finnish interpretation of “Pre-Marketing”	Permitted Pre-Marketing includes circulation of:	Activities to avoid (i.e. because will trigger AIFMD Marketing):
<p>The exact scope of what will constitute Pre-Marketing is not clear.</p> <p>However, it should be possible to conduct certain “soft-circling” activities provided that the information provided is generic in nature and does not constitute a specific offer to investors.</p> <p>The above is based on the government proposal for the AIFM Act.</p>		<p>A generic presentation/teaser covering only the AIFM’s general strategy and track record.</p> <p>An abridged draft PPM provided it is generic in nature and all key information regarding AIFs have been removed (e.g. fund overview, executive summary, principal terms, procedure for subscription).</p> <p>Generic information regarding investment strategies/ideas.</p>	<p>Distribution of any marketing materials or offer documents which contain information on specific funds/products (whether draft or final).</p>

FRANCE			
Pre-Marketing Possible?	French interpretation of "Pre-Marketing"	Permitted Pre-Marketing includes circulation of:	Activities to avoid (i.e. because will trigger AIFMD Marketing):
	<p>Marketing activities will amount to Pre-Marketing where:</p> <ul style="list-style-type: none"> • Contacts are carried out to 50 potential investors maximum; • Potential investors to be contacted are either Professional Investors or Retail Investors whose initial potential subscription would exceed EUR 100,000; and • Only documentation with very broad content is provided (the French Pre-Marketing Conditions). <p>It is also possible to arrange conferences/meetings to provide information on market trends/general information on the management team provided these are with Professional Investors only and no marketing of a specific AIF is undertaken.</p> <p>The above is based on AMF Position no. 2014-04.</p>	<ul style="list-style-type: none">  Documentation with very broad content (e.g. a powerpoint presentation) that is distributed pursuant to the French Pre-Marketing Conditions.  Generic materials regarding investment strategies/ideas from which the French investor could identify the specific AIF that is distributed pursuant to the French Pre-Marketing Conditions..  Generic materials which are sufficiently vague such that it is not possible for the French investor to identify the specific AIF. 	<ul style="list-style-type: none">  Distribution of prospectus, offering document, by-laws, subscription forms and other fund specific marketing materials which do not satisfy the "documentation with very broad content" test.

This is a sample document.
To request the full guidance, please contact
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Rulefinder Marketing Restrictions – Asset Management

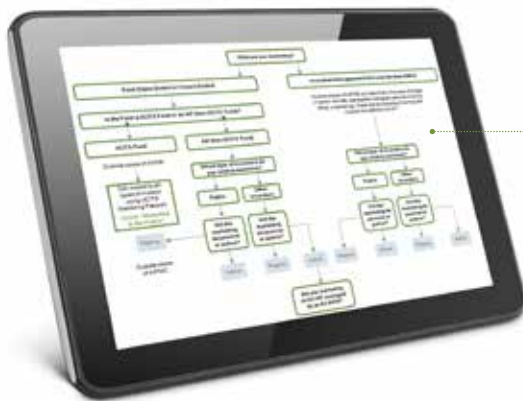
Understand cross-border marketing rules and how they apply to your business

This guide has been compiled using content from aosphere's online subscription service.

Used by asset managers globally, the service analyses the law and regulation applicable to cross-border marketing of funds and investment management and advisory services (eg in relation to managed accounts). We consider the impact on fund structure, investment strategy regulatory status of the marketing entity, investment type and marketing activity (includes reverse enquiry and use of social media) on the rules.

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Navigating the rules – how we guide you from summaries through to detailed legal analysis



*What are you marketing,
who to and how?*

Decision tree to navigate the content

What you can and can't do

Our unique traffic-light summaries provide a quick and practical overview as to permissible activities and investor types.



Dig into the detail...

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