



Non-U.S. Asset Managers Raising Assets in the U.S.

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Common U.S. Distribution Models

Non-U.S. investment managers offer investment advice to U.S. investors primarily using at least one of the following structures:

- **Separately managed accounts**
 - › Both retail and institutional investors permitted
- **Registered investment funds (institutional and retail investors)**
 - › In order to offer a fund to the public, it must be
 - Registered as an “investment company” with the SEC
 - Organized under U.S. law

Common U.S. Distribution Models (continued)

Non-U.S. investment managers offer investment advice to U.S. investors primarily using at least one of the following structures (continued):

- **Non-registered investment funds offered to U.S. investors (high net worth (HNW) and institutional investors only)**
 - › Hedge funds, private equity/venture capital funds, and real estate investment funds typically are excluded from the definition of an “investment company,” and thus, not required to register with the SEC as investment companies

Common U.S. Distribution Models (continued)

Non-U.S. investment managers are not required to establish a U.S. office in order to register with the SEC, though many do:

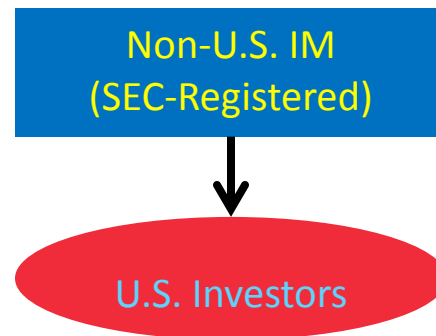
- For tax efficiency
- To isolate non-U.S. employees and operations from U.S. regulation
- If the investment manager intends to have U.S. employees

Common U.S. Distribution Models (continued)

The three common structures for non-U.S. investment managers are:

Direct (No U.S. operations/employees)

- › All non-U.S. operations/employees are subject to SEC-regulation and oversight

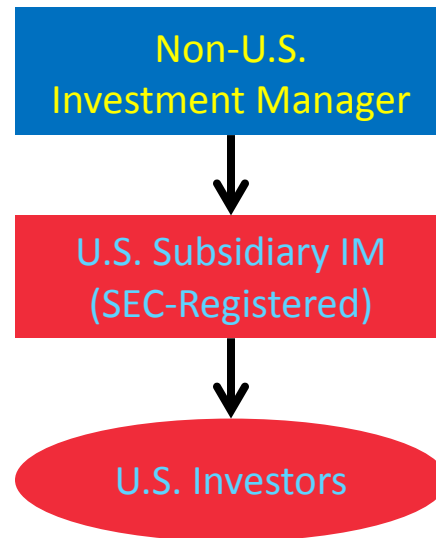


Common U.S. Distribution Models (continued)

The three common structures for non-U.S. investment managers setting up U.S. operations are (continued):

Semi-Indirect (Shared operations/employees)

- › Only non-U.S. operations/employees that are shared with U.S. subsidiary are subject to U.S. regulation and oversight



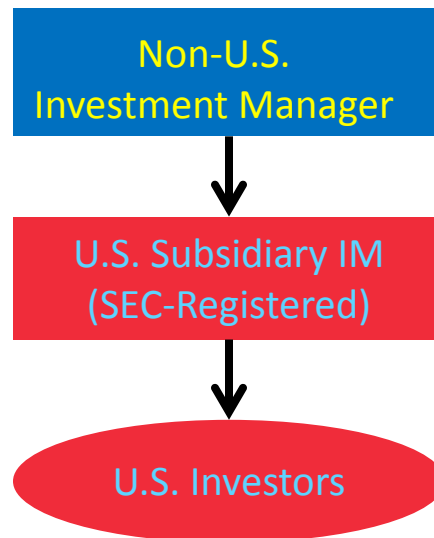
Note: Unless the U.S. operations of the non-U.S. investment manager are clearly segregated from the non-U.S. operations of the U.S. subsidiary, the SEC will consider the non-U.S. operations as covered by those U.S. laws applicable to the U.S. Subsidiary

Common U.S. Distribution Models (continued)

The three common structures for non-U.S. investment managers setting up U.S. operations are (continued):

Wholly Indirect (All U.S. activity conducted from U.S.)

- › Non-U.S. operations/employees are not subject to U.S. regulation and oversight



SEC-Registration Requirement

When is a non-U.S. investment manager required to register with the SEC?

- “Investment adviser” - generally is a person who provides advise relating to the purchase, sale or value of securities for compensation, or that holds itself out to the public as such
- An investment adviser must register in the U.S. unless it is exempt

SEC-Registration Requirement (*continued*)

A “foreign private adviser” is not required to register

▪ “Foreign Private Adviser”

- › Must have no place of business in the U.S. (e.g., no sales office)
- › Must have, in total, fewer than 15 clients (e.g., separately managed accounts, pooled investment vehicles) AND investors in private funds advised by the investment manager
- › Must have less than US\$25 million in aggregate assets under management that is attributable to U.S. clients and investors
- › May not hold itself to the public in the U.S. as an investment adviser
 - Offering a non-U.S. private fund to U.S. investors is not, by itself, holding itself out to the public
- › May not serve as an investment adviser to a registered investment company

Note: *The U.S. does not have any policy equivalent to “reverse solicitation”*

SEC-Registration Requirement (*continued*)

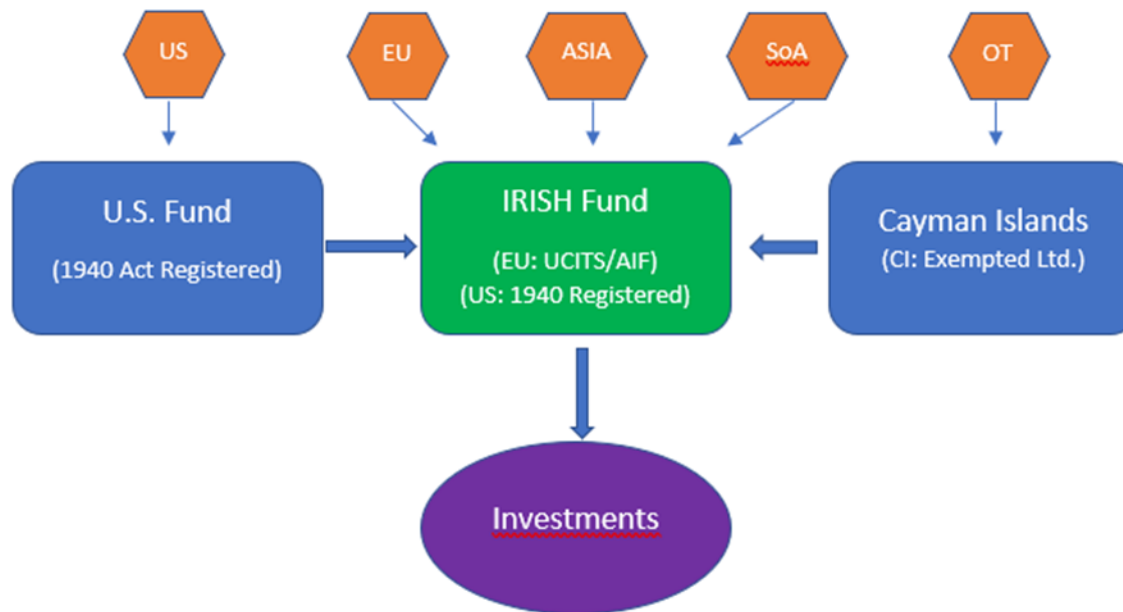
Implications of SEC-Investment Registration

- The registration process, including preparing Form ADV, Parts 1, 2A, and 2B
- State registration of portfolio managers and sales employees who interact with U.S. clients
- Appointment of Chief Compliance Officer
- Preparation and implementation of compliance policies and procedures and a code of ethics
 - › Note: Many E.U. compliance policies are consistent with U.S.-required compliance policies, or may be easily adapted
- Recordkeeping and annual reporting
- Periodic SEC inspections
 - › Will be conducted offshore if necessary

Integrating U.S. Distribution with Global Distribution

UCITS- and AIFMD-compliant funds may be used as master funds with feeder funds organized in U.S., E.U., and other non-E.U. countries (e.g., Cayman Islands, Bermuda)

Example:



Privately Offered Funds

Non-U.S. investment managers may offer to U.S. institutional and HNW investors pooled investment funds organized under non-U.S. law (e.g., Luxembourg, Ireland, Cayman Islands) as well as U.S. law, subject to conditions

- **Most E.U. alternative investment funds (AIFs) may be offered to U.S. institutional and HNW investors**
 - › Hedge funds
 - › Private equity/venture capital funds
 - › Real estate private equity funds

Note: If the fund is to be sold to the U.S. public, it must be organized under U.S. law

Privately Offered Funds (continued)

- **To avoid SEC-registration as an investment company, privately offered funds are typically structured using one of three alternatives**
 - › Section 3(c)(1) – the fund must have no more than 100 beneficial owners and not conduct a public offering of its shares in the U.S.
 - The fund may concurrently conduct a public offering outside the U.S.
 - Generally, all investors must be “accredited investors” – investors that have investment assets of at least US\$1 million (individuals) or US\$5 million (entities)
 - If the fund charges a performance fee, all U.S. investors must be “qualified clients” – investors with at least US\$2.1 million in investment assets or at least US\$1 million invested in the fund and/or being managed by the fund’s investment manager

Privately Offered Funds (continued)

- **To avoid SEC-registration, privately offered funds are typically structured using one of three alternatives (continued)**
 - › Section 3(c)(5) – the fund’s investments must consist primarily of interests in real estate or real estate-related assets
 - Generally, all U.S. shareholders must be “accredited investors”
 - No limit on the number of investors in the fund
 - The fund may charge a performance fee but investors must be “qualified clients”

Privately Offered Funds (continued)

- **To avoid SEC-registration, privately offered funds are typically structured using one of three alternatives (continued)**
 - › Section 3(c)(7) – the fund must limit investors to only “qualified purchasers” and not conduct a public offering of its shares in the U.S.
 - “Qualified Purchaser” – investors that have investment assets of at least US\$5 million (individuals) or US\$25 million (entities)
 - The fund may concurrently conduct a public offering outside the U.S.
 - No limit on the number of investors in the fund
 - Generally, all U.S. shareholders must be accredited investors BUT a qualified purchaser almost always meets the accredited-investor standard
 - The fund may charge a performance fee

Privately Offered Funds (continued)

- **Some additional considerations**

- › U.S. law generally requires registration of public offerings of shares to U.S. investors. However, U.S. regulation (Regulation S) generally would permit a non-U.S. fund to conduct a public offering outside of the U.S. (e.g., a UCITS fund offering shares in the E.U.) concurrently with a private offering in the U.S.
- › If a fund is organized outside of the U.S. (e.g., Luxembourg, Ireland, Cayman Islands), only U.S. investors must qualify as accredited investors, qualified clients, or qualified purchasers

Other Considerations

Other U.S. laws are likely to apply if:

- Your investment strategies include the use of futures, swaps, options and other derivatives
- You manage the assets of private and/or government pension funds
- The U.S. subsidiary distributes to any investor (including non-U.S. investors) interests in funds sponsored or managed by its non-U.S. parent
- You are affiliated with a bank, especially a bank with U.S. operations

Note: U.S. investors are very sensitive to the tax treatment of a fund under the U.S. federal income tax code (e.g., partnership, corporation, REIT)

Moving Forward

Develop a long-term business strategy for the U.S.

- What strategies would be competitive in the U.S.?
- What types of investors would be interested in those strategies?
 - › Institutional investors (e.g., insurance companies, banks, mutual funds, funds-of-funds)
 - › Tax-exempt investors (e.g., endowments, pension plans, foundations)
 - › High net worth individuals
- How will you provide those strategies?
 - › Separate accounts
 - › Fund (registered/unregistered)
 - › Sub-Adviser

Focus on gathering assets, managing assets, servicing assets, compliance and reporting

Moving Forward (continued)

Develop a long-term business strategy for the U.S. (continued)

- Who will sell those services?
 - › Employees
 - › Third parties
- How will you service your clients?
 - › Outside the U.S.
 - › U.S. office

Moving Forward (continued)

Hire the right outside advisers, consultants, and service providers

- Legal and compliance
- Tax
- Accounting and auditing
- Prime brokers, fund administrators, custodians

Be realistic about goals, timing, and costs

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