



# **Raising Funds in the United States**

**Sarah Mana**, Associate

**M. W. Cornish & Co.**



# The US regulatory regime applicable to Non-US asset managers and funds

Non US asset managers and funds are subject to the same regulatory framework as US asset managers and funds, they therefore benefit from the same exemptions.

They also benefit from less stringent regulatory requirements, under particular conditions, due to their status as a foreign entity.

A graphic of the American flag, showing the stars and stripes, positioned at the top of the slide. The text "YOU ARE..." is overlaid on the left side of the flag.

**YOU ARE...**

**An issuer offering interests of a fund to U.S Investors**

Every offer and sale of securities even if to just one person must either be registered with the SEC or conducted under an exemption from registration.

Private placements under certain conditions can benefit from the Private Offering Exemptions of Regulation D provided by Rules 504 and 506.

The foregoing rules do not exempt issuers from complying with federal anti-fraud provisions and civil liability provisions of the Exchange Act.



**YOU ARE...**

## **An issuer offering interests of a fund to U.S Investors**

	<b>RULE 504</b>	<b>RULE 506</b>
<b>Transactions volume limitation</b>	No more than \$5M of securities are sold in any consecutive twelve-month period.	None
<b>Ceiling on the number of non-accredited investors</b>	None	(i) not more than 35 non-accredited purchasers; and (ii) Subjective determination that such investors meet a “Sophistication standard”
<b>Ceiling on the number of accredited investor</b>	None	None
<b>Restrictions on manner of offering or resale of securities</b>	None	<b>General solicitation is prohibited</b> , unless:  (i) All purchasers of securities are accredited investors; and  (i) the issuer takes reasonable steps to verify their accredited investor status
<b>Disclosure requirements</b>	None	<b>IF purchasers are non-accredited:</b> disclosure documents that are generally the same as those used in registered offerings are required.
<b>Compliance with blue sky laws</b>	Required	Exempted



**YOU ARE...**

## **A non-US asset manager of a fund seeking US Investors**

### **I. SEC Registration requirement**

You are required to register as an Investment Adviser with the SEC, UNLESS you are within the scope of one of the following exemptions :

	<b>The Private Fund Exemption</b>	<b>The Venture Capital Fund Adviser Exemption</b>	<b>Foreign Private Adviser Exemption</b>
<b>Place of business</b>	Anywhere	Anywhere	Outside the United States
<b>Advisees in the US</b>	Private Funds, solely	Venture Capital funds.  Must pursue a venture capital strategy	(i) Private Funds (ii) Does not hold itself out to the public generally in the US as an Investment Adviser.
<b>Regulatory AUM Ceiling</b>	\$ 150 million in the US	None	\$25 Million in the US
<b>Beneficial ownership of funds advised requirements</b>	(i) Fewer than 100 beneficial owners; or (ii) Qualified Purchasers (sophisticated investors with a minimum amount of investable assets)	None	(i) Fewer than 15 clients and investors in funds advised (both holders of debt and equity count)



**YOU ARE...**

## **A non-US asset manager of a fund seeking US Investors**

### **I. CFTC Registration Requirement**

You are required to register as a Commodities Trading Adviser (CTA) and/or Commodities Pool Operator (CPO) with the Commodities Futures Trading Commission (CFTC) , **if you engage in any transaction in a commodity interest** (incl. futures derivatives and swaps) with respect to each fund with US investors, UNLESS you are within the scope of one of the following exemptions :

#### **You are exempted from CTA registration if...**

#### **You are exempted from CPO registration if...**

I.  
in the preceding twelve months, you have not furnished commodity trading advice to more than 15 US persons and do not hold yourself out generally to the public as a CTA.

II.  
A. you are an SEC registered investment adviser;  
B. your business does not consist primarily of acting as a commodity trading advisor; and  
C. you do not act as a commodity trading advisor to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market or registered derivatives transaction execution facility.

III. You are already registered as a CPO or exempted from registration as a CPO

I. With respect to the relevant commodity pool, you ensure that swaps/derivatives use is de minimis:  
(i) The aggregate initial margin and premiums do not exceed 5% of the fund's asset liquidation value, or  
(ii) The aggregate net notional value of swaps/derivatives do not exceed 100% of the fund's asset liquidation value.

**If none of the foregoing exemptions are available :**

"registration light" scheme with fewer disclosure and reporting obligations is also available to registered CPOs and CTAs managing commodity pools whereby all investors are non-U.S. persons or U.S. persons that are "qualified eligible persons"

# M. W. Cornish & Co.



## About Us

M.W.Cornish & Co. is a niche financial services law firm. One of our key focus areas is fund management and we have an in-depth understanding of the industry and its demands.

The firm was established by Martin Cornish, a recognised legal expert who was previously a partner at leading UK and US law firms and an international investment bank.

## Areas of Expertise

One of our key areas of expertise is identifying and implementing the optimal corporate and fund structure for clients. This involves identifying the most appropriate jurisdiction and legal structure for both the management company and the fund taking account of the regulatory and tax considerations of investors as well as the manager.

We have experience with regard to all types of fund structures, including master-feeder structures, funds-of-funds, parallel funds, multi-strategy funds, closed end, listed and retail funds such as UCITS. And the full range of strategies employed by alternative investment funds including hedge (e.g. longshort, global macro, credit, distressed debt, illiquid investments, activist, arbitrage, CTAs etc.), real estate funds, private equity, venture, commodities and natural resource funds and crypto currency funds