ILPA SUBMISSION TO ESMA ON THE PROPOSED THIRD COUNTRY MARKETING PASSPORT FOR NON-EU MANAGERS

On January 8, 2015, ILPA submitted an official response to the European securities regulator (ESMA)'s call for evidence on the functioning of the Alternative Investment Fund Managers Directive (AIFMD) marketing passport and that of the national private placement regimes, as well as the proposed extension of the marketing passport to third country alternative investment fund managers (AIFMs).

In our submission, ILPA expressed concern about the impact of new marketing rules introduced with the implementation of the AIFMD on the range and quality of investment opportunities available to EU investors and the attractiveness of Europe for fund managers seeking to raise capital in Europe.

Our submission asserted that:

- LPS worldwide welcome the enhanced oversight and disclosure but believe that such regulation must be consistently applied and evenly enforced.
- Regulation must also strike a considered balance between investor and consumer protections.
- More time is needed to truly assess the AIFMD Passport regime and its functioning.
- Ensuring the workability of the AIFM Directive for the industry and the attractiveness of the EU for non-EU AIFMs is key and should be the ultimate objective during this review.
- It is important to ensure that Europe is open and accessible to non-EU AIFMs and non-EU AIFs, allowing EU investors to have access to a wide range of investments to meet their long-term obligations.
- It is crucial that EU investors can compete with their non-EU counterparts on a level-playing field in terms of access to the most attractive investment opportunities available globally.

A survey of 43 members revealed that the implementation of the AIFMD had, overall, raised barriers to investment rather than facilitating capital flows.

European investors have observed a decrease in marketing activity of non-EU AIFs and expressed the view that they believe they are missing out on good quality investment opportunities as well as valuable market intelligence. In addition, processing delays by national regulators have resulted in investors missing the window to invest with their preferred managers altogether.

Specific findings from our survey of European members revealed that:

- **52%** of respondents believe that AIFMD registration requirements had a negative impact on European LPs
- **52%** report that changes to national private placement regimes have been negative
- **86%** of European investors surveyed report that marketing activity among non-EU AIFMs has decreased since the implementation of the AIFMD
- **69%** consider their PE program to be at a competitive disadvantage to non-EU counterparts in terms of access to managers as a result ofthe AIFM Directive

The majority of members we surveyed, 76%, were in favour of the extension of the European marketing passport under the AIFMD to non-EU AIFMs, provided it was well-proportioned to the amount of capital that European investors represent in non-European funds, and introduced in an efficient, consistent and commercially sensitive manner. The key perceived benefits to the extension of the passport to non-EU AIFMs is increased investor choice by addressing the complexity and regulatory uncertainty impeding many non-EU AIFMs from approaching EU-based investors.