



**Financial Services  
Commission**

## **Information page**

# **Alternative Investment Fund Managers Directive Marketing - General**

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**Table of Contents**

Introduction.....	3
General - AIFMD marketing passport.....	3
Application of technical standards.....	3
Part I – Gibraltar AIFM marketing EU AIF in Gibraltar.....	4
Part II – Gibraltar AIFM marketing EU AIF in another Member State.....	6
Part III – EU AIFM marketing non-EU AIF in the EU.....	8
Part IV – EU AIFM marketing non-EU AIF in Gibraltar without a passport.....	10
Part V – Non-EU AIFM marketing EU AIF in the EU.....	11
Part VI – Non-EU AIFM marketing non-EU AIF in the EU with a passport.....	13
Part VII – Non-EU AIFM marketing any AIF in the EU without a passport.....	15
Schedule – Article 23(1) of the AIFMD.....	16

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*Any advice or interpretation covered in this information page represents the views of the FSC as to its expectations of how the requirements of the AIFMD are to be complied with and/or how it fails to be applied. This however is not intended as a definitive interpretation of the AIFMD which is ultimately a matter for the courts to determine. The FSC does not provide, or purport to offer, legal advice.*

## Introduction

- 1.1 In this information page, reference is made to the Alternative Investment Fund Managers Directive 2011/61/EU ("AIFMD").
- 1.2 This information page is divided into different parts with each part dealing with different scenarios, for example whether the AIFM and/or AIF is based in the EU or in a third country.

## General - AIFMD marketing passport

- 2.1 Authorised AIFMs in full compliance with the AIFMD will benefit from the full EU marketing passport. Small AIFMs, i.e. those which just need to register (please refer to the FSC information page on "AIFMD - Small AIFMs") would not be allowed to market AIFs. Under the passport, AIFMs will be able to market the AIFs that they manage to "professional investors" in all 27 Member States.
- 2.2 Passporting applies to "marketing" which is defined in Article 4(1)(x) of the AIFMD as "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". Notwithstanding this, the FSC shall require that AIFs be marketed only to professional investors.
- 2.3 The AIFMD defines "professional investor" as "an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC" (i.e. a professional client as defined by MiFID).
- 2.4 However, under Article 43 of the AIFMD, each Member State may also allow marketing to "retail clients" (i.e. clients not classified as professional under MiFID) and may impose stricter requirements on such AIFM or AIF. In this respect the AIFM would need to ensure that it meets with the requirements in each Member State.
- 2.5 It is important to note that AIFMs making use of passporting will still need to comply with each Member State's local marketing laws and conduct of business rules where relevant. In addition, these marketing rules only apply to AIFMs which are in scope of the AIFMD pursuant to Article 3(2) of the AIFMD (*de minimis* thresholds) or who have opted in, and obtained authorisation under, the AIFMD. It is therefore the responsibility of AIFMs to ensure that AIFs it markets comply with the relevant marketing laws of each relevant Member State.

## Application of technical standards

- 3.1 All sections in this Guidance Note shall be applied in accordance with any technical standards adopted by the European Union Commission in accordance with the AIFMD.
- 3.2 ESMA will provide templates for all notification letters described in this information page. The FSC will be providing such information once available.

## Part I – Gibraltar AIFM marketing EU AIF in Gibraltar

*(Article 31 of the AIFMD)*

- 4.1 For a Gibraltar AIFM that intends to market an EU AIF in Gibraltar, the AIFM will need to submit a notification to the Financial Services Commission (“FSC”) in respect of each AIF it intends to market. Where the EU AIF is a feeder AIF, the right to market is subject to the condition that the master AIF is also an EU AIF which is managed by an authorised EU AIFM.
- 4.2 The notification form, available from the FSC website, comprises of the following documentation and information, which is listed in Annex III of the AIFMD:
- (i) a notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;
  - (ii) the AIF rules or instruments of incorporation;
  - (iii) identification of the depositary of the AIF;
  - (iv) a description of, or any information on, the AIF available to investors;
  - (v) information on where the master AIF is established if the AIF is a feeder AIF;
  - (vi) any additional information referred to in Article 23(1) of the AIFMD (see Schedule I to this Guidance Note) for each AIF the AIFM intends to market; and
  - (vii) where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.
- 4.3 Within 20 working days following receipt of a complete notification file pursuant to section 4.2 above, the FSC will inform the AIFM whether it may start marketing the AIF identified in the notification referred to in section 4.1 above.
- 4.4 The FSC will only prevent the marketing of the AIF if:
- (i) the AIFM’s management of the AIF does not or will not comply with the AIFMD; or
  - (ii) the AIFM otherwise does not or will not comply with the AIFMD.
- This is only expected to be used in exceptional circumstances.
- 4.5 In the case of a positive decision, the AIFM may start marketing the AIF in Gibraltar from the date of the notification by the FSC to that effect.
- 4.6 The FSC shall also inform the supervisor of the AIF (if not the FSC) that the AIFM may start marketing units or shares of the AIF in Gibraltar.

*Material changes to the notification referred to in section 4.1 above*

- 4.7 In the event of a material change to any of the particulars communicated in accordance with section 4.1 above, the AIFM must give written notice of that change to the FSC:
- (i) at least 1 month before implementing the change as regards any changes planned by the AIFM; or
  - (ii) immediately after an unplanned change has occurred.



- 4.8 If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the AIFMD or the AIFM would otherwise no longer comply with the AIFMD, the FSC will inform the AIFM that it is not to implement the change. Again this is only expected to be used in exceptional circumstances.
- 4.9 If a planned change is implemented notwithstanding sections 4.7 and 4.8 above or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with the AIFMD or the AIFM otherwise no longer complies with the AIFMD, the FSC will take action against the AIFM including, if necessary, the express prohibition of marketing of the AIF.

## Part II – Gibraltar AIFM marketing EU AIF in another Member State

*(Article 32 of the AIFMD)*

- 5.1 For a Gibraltar AIFM that intends to market an EU AIF in another Member State, the AIFM will be required to submit a notification to the FSC in respect of each AIF it intends to market and a separate form is also needed for each jurisdiction it intends to market in. Where the EU AIF is a feeder AIF, the right to market is subject to the condition that the master AIF is also an EU AIF which is managed by an authorised EU AIFM.
- 5.2 The notification shall comprise of the following documentation and information, which is listed in Annex IV of the AIFMD:
- (i) a notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;
  - (ii) the AIF rules or instruments of incorporation;
  - (iii) identification of the depositary of the AIF;
  - (iv) a description of, or any information on, the AIF available to investors;
  - (v) information on where the master AIF is established if the AIF is a feeder AIF;
  - (vi) any additional information referred to in Article 23(1) of the AIFMD (see Schedule I to this Guidance Note) for each AIF the AIFM intends to market;
  - (vii) the indication of the Member State in which it intends to market the units or shares of the AIF to professional investors; and
  - (viii) information about arrangements made for the marketing of AIFs and, where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.
- Arrangements referred to in point (viii) shall be subject to the laws and supervision of the host Member State of the AIFM.
- 5.3 Within 20 working days following receipt of a complete notification file pursuant to section 5.2 above, the FSC will transmit the complete notification file to the competent authorities of the Member States where it is intended to market the AIF. The FSC will also enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.
- 5.4 The transmission referred to in section 5.3 above will only be made by the FSC if in the FSC's view the AIFM's management of the AIF complies with and will continue to comply with the AIFMD and if the AIFM otherwise complies with the AIFMD.
- 5.5 As soon as the transmission referred to in section 5.3 above is made, the FSC will notify the AIFM about the transmission and the AIFM may start marketing the AIF in the host Member State of the AIFM as of the date of that notification.
- 5.6 The FSC shall also inform the competent authorities of the AIF (if not the FSC) that the AIFM may start marketing units or shares of the AIF in the host Member State.



*Material changes to the notification referred to in section 5.1 above*

- 5.7 In the event of a material change to any of the particulars communicated in accordance with section 5.2 above, the AIFM must give written notice of that change to the FSC:
- (i) at least 1 month before implementing a planned change, or
  - (ii) immediately after an unplanned change occurring.
- 5.8 If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the AIFMD or the AIFM would otherwise no longer comply with the AIFMD, the FSC will inform the AIFM that it is not to implement the change.
- 5.9 If a planned change is implemented notwithstanding sections 5.7 and 5.8 above or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with the AIFMD or the AIFM otherwise would no longer comply with the AIFMD, the FSC will take action against the AIFM including, if necessary, the express prohibition of marketing of the AIF.



## Part III – EU AIFM marketing non-EU AIF in the EU

*(Article 35 of the AIFMD)*

**(N.B. Not applicable until mid-2015 at the earliest)**

- 6.1 In order for an EU AIFM to market non-EU AIFs in the EU, the AIFM must be authorised under and must comply with all the requirements of the AIFMD. In addition, the following conditions must be met:
- (i) appropriate cooperation arrangements must be in place between the FSC and the supervisory authorities of the third country where the non-EU AIF is established;
  - (ii) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;
  - (iii) the third country where the non-EU AIF is established has signed an agreement with Gibraltar and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

### *Marketing in Gibraltar*

- 6.2 If a Gibraltar AIFM intends to market units or shares of non-EU AIFs in Gibraltar, the AIFM shall submit a notification to the FSC in respect of each non-EU AIF that it intends to market. The notification shall comprise of the documentation and information set out in Annex III of the AIFMD (see section 4.2 above).
- 6.3 No later than 20 working days after receipt of a complete notification pursuant to section 6.2 above, the FSC shall inform the AIFM whether it may start marketing the AIF identified in the notification in Gibraltar. In the case of a positive decision, the AIFM may start marketing the AIF in Gibraltar as of the date of the notification by the FSC to that effect.
- 6.4 The FSC shall prevent the marketing of the AIF only if the AIFM's management of the AIF does not or will not comply with the AIFMD or the AIFM otherwise does not or will not comply with the AIFMD.

### *Marketing in Member States other than Gibraltar*

- 6.5 If an AIFM intends to market units or shares of non-EU AIFs in a Member State other than Gibraltar, the AIFM shall submit a notification to the FSC in respect of each non-EU AIF that it intends to market. The notification shall comprise the documentation and information set out in Annex IV to the AIFMD (see section 5.2 above).
- 6.6 The FSC shall, no later than 20 working days after the date of receipt of the complete notification file referred to in section 6.5 above, transmit that complete notification file to the competent authorities of the Member State where the AIF is intended to be marketed. The FSC shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.



- 6.7 The FSC will only make the above transmission if the AIFM's management of the AIF complies and will continue to comply with the AIFMD and that the AIFM otherwise complies with the AIFMD.
- 6.8 As soon as the above transmission is made, the FSC will notify the AIFM about the transmission. The AIFM may start marketing the AIF in the relevant host Member States as of the date of that notification by the FSC.

*Material changes to the notifications referred to in sections 6.2 and 6.5 above*

- 6.9 In the event of a material change to any of the particulars communicated in accordance with this section, the AIFM must give written notice of that change to the FSC:
- (i) at least 1 month before implementing a planned change, or
  - (ii) immediately after an unplanned change has occurred.
- 6.10 If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the AIFMD or the AIFM would no longer comply with the AIFMD, the FSC will inform the AIFM that it is not to implement the change.
- 6.11 If a planned change is implemented notwithstanding sections 6.9 and 6.10 above, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with the AIFMD or the AIFM otherwise would no longer comply with the AIFMD, the FSC will take action against the AIFM including, if necessary, the express prohibition of marketing of the AIF.



## Part IV – EU AIFM marketing non-EU AIF in Gibraltar without a passport

*(Article 36 of the AIFMD)*

- 7.1 An authorised EU AIFM may market to professional investors, in Gibraltar, units or shares of non-EU AIFs it manages and of EU feeder AIFs, where the master AIF is not an EU AIF managed by an authorised EU AIFM, provided that:
- (i) the AIFM complies with all the requirements established in the AIFMD with the exception of Article 21 on depositaries;
  - (ii) the AIFM ensures that one or more entities are appointed to carry out the depositary duties referred to in Articles 21(7), (8) and (9);
  - (iii) the AIFM does not perform those functions;
  - (iv) AIFM provides the FSC with information about the identity of those entities responsible for carrying out the depositary duties referred to in Article 21(7), (8) and (9);
  - (v) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the FSC and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows the FSC to carry out its duties in accordance with the AIFMD;
  - (vi) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.



## Part V – Non-EU AIFM marketing EU AIF in the EU

*(Article 39 of the AIFMD)*

**(N.B. Not applicable until mid-2015 at the earliest)**

- 8.1 A duly authorised non-EU AIFM may market the units or shares of an EU AIF it manages to professional investors in the EU with a passport provided the conditions set out in the following sections are met.

*Marketing in Gibraltar (being the Member State of reference)*

- 8.2 If the AIFM intends to market units or shares of an EU AIF in Gibraltar (being its Member State of reference), the AIFM must submit a notification to the FSC in respect of each EU AIF that it intends to market. The notification shall comprise the documentation and information set out in Annex III to the AIFMD (see section 4.2 above).
- 8.3 No later than 20 working days after receipt of a complete notification the FSC will inform the AIFM whether it may start marketing the AIF identified in the notification in Gibraltar. In the case of a positive decision, the AIFM may start marketing the AIF in Gibraltar as of the date of the notification by the FSC.
- 8.4 The FSC may only prevent the marketing of the AIF if the AIFM's management of the AIF does not or will not comply with the AIFMD or if the AIFM otherwise does not or will not comply with the AIFMD.

*Marketing in a Member State other than Gibraltar (being the Member State of reference)*

- 8.5 If the AIFM intends to market units or shares of the EU AIF in Member States other than Gibraltar (being its Member State of reference), the AIFM must submit a notification to the FSC in respect of each EU AIF that it intends to market. The notification shall comprise the documentation and information set out in Annex IV to the AIFMD (see section 5.2 above).
- 8.6 The FSC will, no later than 20 working days after the date of receipt of the complete notification file referred to in section 8.5 above, transmit the complete notification file to the competent authorities of the Member States where the units or shares of the AIF are intended to be marketed. The FSC will enclose a statement with the transmission to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.
- 8.7 The FSC will only make the above transmission if the AIFM's management of the AIF complies and will continue to comply with the AIFMD and if the AIFM otherwise complies with the AIFMD.
- 8.8 As soon as the above transmission is made, the FSC will notify the AIFM about the transmission. The AIFM may start marketing the AIF in the relevant host Member States as of the date of that notification.



*Material changes to the notifications referred to in sections 8.2 and 8.5 above*

- 8.9 In the event of a material change to any of the particulars communicated in accordance with this section, the AIFM must give written notice of that change to the FSC:
- (i) at least 1 month before implementing a planned change, or
  - (ii) immediately after an unplanned change has occurred.
- 8.10 If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the AIFMD or the AIFM would no longer comply with the AIFMD, the FSC will inform the AIFM that it is not to implement the change.
- 8.11 If a planned change is implemented notwithstanding sections 8.9 and 8.10 above, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with the AIFMD or the AIFM otherwise would no longer comply with the AIFMD, the FSC will take action against the AIFM including, if necessary, the express prohibition of marketing of the AIF.

## Part VI – Non-EU AIFM marketing non-EU AIF in the EU with a passport

*(Article 40 of the AIFMD)*

**(N.B. Not applicable until mid-2015 at the earliest)**

- 9.1 A duly authorised non-EU AIFM may market the units or shares of a non-EU AIF it manages to professional investors in the EU with a passport provided the conditions set out in the following sections are met.
- 9.2 In addition to the requirements in the AIFMD in relation to EU-AIFMs, for non-EU AIFMs the following conditions shall be met:
- (i) appropriate cooperation arrangements are in place between the FSC and the supervisory authority of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties in accordance with this Act;
  - (ii) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;
  - (iii) the third country where the non-EU AIF is established has signed an agreement with Gibraltar and with each other Member State in which the units or shares of the non-EU AIF are intended to be marketed which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements.

### *Marketing in Gibraltar*

- 9.3 The AIFM shall submit a notification to the FSC in respect of each non-EU AIF that it intends to market in Gibraltar. The notification shall comprise the documentation and information set out in Annex III to the AIFMD (see section 4.2 above).
- 9.4 No later than 20 working days after receipt of a complete notification the FSC will inform the AIFM whether it may start marketing the AIF identified in the notification in Gibraltar. In the case of a positive decision, the AIFM may start marketing the AIF in Gibraltar from the date of the notification by the FSC to that effect.
- 9.5 The FSC may only prevent the marketing of the AIF if the AIFM's management of the AIF does not or will not comply with the AIFMD or if the AIFM otherwise does not or will not comply with the AIFMD.

### *Marketing in a Member State other than Gibraltar*

- 9.6 If the AIFM intends to market the units or shares of a non-EU AIF also in Member States other than Gibraltar, the AIFM shall submit a notification to the FSC in respect of each non-EU AIF that it intends to market. The notification shall comprise the documentation and information set out in Annex IV to the AIFMD (see section 5.2 above).



- 9.7 The FSC shall, no later than 20 working days after the date of receipt of the complete notification file referred to in section 9.6 above, transmit it to the competent authorities of the Member States where the units or shares of the AIF are intended to be marketed. The FSC will enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.
- 9.8 The FSC will only make the above transmission if the AIFM's management of the AIF complies and will continue to comply with the AIFMD and that in general the AIFM complies with the AIFMD.
- 9.9 As soon as the above transmission is made, the FSC will notify the AIFM about the transmission. The AIFM may start marketing the AIF in the relevant host Member States as of the date of that notification.

*Material changes to the notifications referred to in sections 9.3 and 9.6 above*

- 9.10 In the event of a material change to any of the particulars communicated in accordance with this section, the AIFM must give written notice of that change to the FSC:
- (i) at least 1 month before implementing a planned change, or
  - (ii) immediately after an unplanned change has occurred.
- 9.11 If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with the AIFMD or the AIFM would no longer comply with the AIFMD, the FSC will inform the AIFM that it is not to implement the change.
- 9.12 If a planned change is implemented notwithstanding sections 9.10 and 9.11 above, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with the AIFMD or the AIFM otherwise would no longer comply with the AIFMD, the FSC will take action against the AIFM including, if necessary, the express prohibition of marketing of the AIF.



## Part VII – Non-EU AIFM marketing any AIF in the EU without a passport

*(Article 42 of the AIFMD)*

- 10.1 Non-EU AIFMs may market to professional investors, in Gibraltar, units or shares of AIFs they manage subject to the following conditions:
- (i) the non-EU AIFM complies with Articles 22, 23 and 24 of the AIFMD, on reporting and disclosure, in respect of each AIF marketed by it pursuant to this section and with Articles 26 to 30, on control of non-listed companies, of the AIFMD where an AIF marketed by it pursuant to this section falls within the scope of Article 26(1) of the AIFMD (for which purpose competent authorities and AIF investors referred to in those sections shall be deemed those of the Member States where the AIFs are marketed);
  - (ii) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the competent authorities of the Member States where the AIFs are marketed, in so far as applicable, the competent authorities of the EU AIFs concerned and the supervisory authorities of the third country where the non-EU AIFM is established and, in so far as applicable, the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows competent authorities of the relevant Member States to carry out their duties in accordance with the AIFMD;
  - (iii) the third country where the non-EU AIFM or the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

## Schedule – Article 23(1) of the AIFMD

*(Article 23(1) of the AIFMD)*

- 11.1 Further to sections 3.2(vi) and 4.2(vi), the additional information required to be disclosed by AIFMs to the investors of each AIF that they manage is as follows:
- (i) a description of the investment strategy and objectives of the AIF,
  - (ii) information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds,
  - (iii) a description of the types of assets in which the AIF may invest,
  - (iv) the techniques it may employ and all associated risks,
  - (v) any applicable investment restrictions,
  - (vi) the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF;
  - (vii) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
  - (viii) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in Gibraltar or the territory where the AIF is established;
  - (ix) the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;
  - (x) a description of how the AIFM is complying with the requirements of Article 9(7) of the AIFMD;
  - (xi) a description of any delegated management function as referred to in Annex I to the AIFMD by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;
  - (xii) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with section Article 19 of the AIFMD;
  - (xiii) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
  - (xiv) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
  - (xv) a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;
  - (xvi) the latest annual report referred to in section Article 22 of the AIFMD;
  - (xvii) the procedure and conditions for the issue and sale of units or shares;
  - (xviii) the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with section Article 19 of the AIFMD;



- (xix) where available, the historical performance of the AIF;
- (xx) the identity of the prime broker and—
  - (a) a description of any material arrangements of the AIF with its prime brokers,
  - (b) the way the conflicts of interest in relation thereto are managed,
  - (c) the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and
  - (d) information about any transfer of liability to the prime broker that may exist; and
- (xxi) a description of how and when the other information required under this section will be disclosed.