



Financial Services
Commission

Information page

Alternative Investment Fund Managers Directive Transparency requirements – Disclosure to investors

Issued : 7- May 2013





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Financial Services Commission
PO Box 940, Suite 3, Ground Floor,
Atlantic Suites, Europort Avenue,
Gibraltar

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.



1. Introduction

- 1.1 In this information page, reference is made to the Alternative Investment Fund Managers Directive 2011/61/EU (“AIFMD”) and to the supplementing Level 2 Delegated Regulation (“Level 2”).
- 1.2 The AIFMD requires Alternative Investment Fund Managers (“AIFMs”) to make certain disclosures in accordance with conditions set out in the AIFMD and Level 2. The purpose of this information page is to provide AIFMs with clear information, based on the AIFMD and Level 2, on what requirements and conditions they must comply with in relation to disclosures to investors.
- 1.3 It is important that investors have clear and accurate information on AIFMs and AIFs so that they can make informed decisions with regards to where they decide to invest their money. The usability of this information is also further increased when such information is reported in a similar fashion for all AIFMs and AIFs as investors will be able to make comparisons among AIFMs and AIFs and also from period to period.
- 1.4 However, this does not mean that all AIFs will report in the same function. AIFMD and Level 2 both recognise the diversity in types of AIFs and therefore the type of information reported by AIFMs should vary according to the type of AIF and would depend on other factors such as investment strategy and the portfolio composition.

2. Disclosure to investors

Article 23 of the AIFMD

- 2.1 AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the European Union, make available to AIF investors certain information set out below:
 - (a) a description of the investment strategy and objectives of the AIF;
 - (b) information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds;
 - (c) a description of the types of assets in which the AIF may invest;
 - (d) the techniques it may employ and all associated risks;
 - (e) any applicable investment restrictions;
 - (f) 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 is entitled to employ on behalf of the AIF;
 - (g) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
 - (h) 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;

- (i) 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;
- (j) a description of how the AIFM is complying with the requirements of Article 9(7) of the AIFMD (on capital requirements)¹;
- (k) a description of any delegated management function as referred to in Annex I to the AIFMD (listing the functions of the AIFM)² 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;
- (l) 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 Article 19 of the AIFMD (on valuation)³;
- (m) 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. This should include disclosure of notice periods in relation to redemptions, details of lock-up periods, an indication of circumstances in which normal redemption mechanisms might not apply or may be suspended, and details of any measures that may be considered by the governing body, such as gates and side pocketing, as they have an impact on the specific redemption rights of investors in the particular AIF;
- (n) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- (o) 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;
- (p) the latest annual report referred to in Article 22 of the AIFMD (annual report)⁴;
- (q) the procedure and conditions for the issue and sale of units or shares;
- (r) the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with Article 19 of the AIFMD (on valuation);
- (s) where available, the historical performance of the AIF;
- (t) the identity of the prime broker and:
 - (i) a description of any material arrangements of the AIF with its prime brokers,

¹ For further information, please refer to the FSC information page on "AIFMD – Authorisation of AIFMs – Capital requirements".

² For further information, please refer to the FSC information page on "AIFMD – Delegation".

³ For further information, please refer to the FSC information page on "AIFMD – Organisational requirements - Valuation".

⁴ For further information, please refer to the FSC information page on "AIFMD – Transparency requirements – Annual report".



- (ii) the way the conflicts of interest in relation thereto are managed,
 - (iii) the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and
 - (iv) information about any transfer of liability to the prime broker that may exist; and
 - (u) a description of how and when the other information required under this section will be disclosed.
- 2.2 Information must be made available under section 2.1 to investors before they invest in the AIF.
- 2.3 Investors must also be informed about any material changes to the information provided under section 2.1.
- 2.4 The AIFM must inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Article 21(13) of the AIFMD (on depositaries)⁵.
- 2.5 The AIFM must also inform investors of any changes with respect to depositary liability without delay.
- 2.6 Where the AIF is required to publish a prospectus in accordance with Directive 2003/71/EC⁶ or in accordance with the law of Gibraltar, only such information referred to above as is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in the prospectus.
- 2.7 AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the European Union, periodically disclose to investors:
- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
 - (b) any new arrangements for managing the liquidity of the AIF;
 - (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.
- 2.8 AIFMs managing EU AIFs employing leverage or marketing in the European Union AIFs employing leverage shall, for each such AIF disclose, on a regular basis:
- (a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement; and
 - (b) the total amount of leverage employed by that AIF.
- 2.9 The rules or instruments of incorporation of each AIF must state the information that it must make available in accordance with section 2.1 above.

⁵ For further information, please refer to the FSC information page on "AIFMD – Depositaries".

⁶ On the prospectus to be published when a closed end fund is offered to the public or admitted to trading.

3. Periodic disclosure to investors

Article 108 of Level 2

- 3.1 The information referred to in section 2.7 above shall be presented in a clear and understandable way.
- 3.2 When disclosing the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature in accordance with section 2.7(a) above, the AIFM shall:
- (a) provide an overview of any special arrangements in place including whether they relate to side pockets, gates or other similar arrangements, the valuation methodology applied to assets which are subject to such arrangements and how management and performance fees apply to these assets;
 - (b) disclose this information as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation, or at the same time as the prospectus and offering document and — as a minimum — at the same time as the annual report is made available in accordance with Article 22(1) of the AIFMD (annual report)⁷.

The percentage of the AIF's assets which are subject to special arrangements shall be calculated as the net value of those assets subject to special arrangements divided by the net asset value of the AIF concerned.

In this respect, 'Special arrangement' means an arrangement that arises as a direct consequence of the illiquid nature of the assets of an AIF which impacts the specific redemption rights of investors in a type of units or shares of the AIF and which is a bespoke or a separate arrangement from the general redemption rights of investors.

- 3.3 For any new arrangements for managing the liquidity of the AIF in accordance with section 2.7(b) above, AIFMs shall:
- (a) for each AIF that they manage which is not an unleveraged closed-ended AIF, notify to investors whenever they make changes to the liquidity management systems and procedures referred to in Article 16(1) of the AIFMD (on liquidity management)⁸ which are material in accordance with Article 106(1) of Level 2 (on material changes)⁹;
 - (b) immediately notify investors where they activate gates, side pockets or similar special arrangements or where they decide to suspend redemptions;
 - (c) provide an overview of the changes to arrangements concerning liquidity, whether or not these are special arrangements. Where relevant, the terms under which redemption is permitted and circumstances determining when management discretion applies shall be included. Also any voting or other restrictions exercisable, the length of any lock-up or

⁷ For further information, please refer to the FSC information page on "AIFMD – Transparency requirements – Annual report".

⁸ For further information, please refer to the FSC information page on "AIFMD – Operating conditions – Liquidity management".

⁹ For further information, please refer to the FSC information page on "AIFMD – Transparency requirements – Annual report".

any provision concerning 'first in line' or 'pro-rating' on gates and suspensions shall be included.

- 3.4 The disclosure of the risk profile of the AIF in accordance with section 2.7(c) above shall outline:
- (a) measures to assess the sensitivity of the AIF's portfolio to the most relevant risks to which the AIF is or could be exposed;
 - (b) if risk limits set by the AIFM have been or are likely to be exceeded and where these risk limits have been exceeded a description of the circumstances and, the remedial measures taken.

The information shall be disclosed as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation or at the same time as the prospectus and offering document and - at a minimum - at the same time as the annual report is made available in accordance with Article 22(1) of the AIFMD (annual report).

- 3.5 The risk management systems employed by the AIFM in accordance with section 2.7(c) above shall outline the main features of the risk management systems employed by the AIFM to manage the risks to which each AIF it manages is or may be exposed. In the case of a change the disclosure shall include the information relating to the change and its anticipated impact on the AIF and its investors.

The information shall be disclosed as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation or at the same time as the prospectus and offering document and - as a minimum - at the same time as the annual report is made available or made public in accordance with Article 22(1) of the AIFMD (annual report)¹⁰.

4. Regular disclosure to investors

Article 109 of Level 2

- 4.1 The information referred to in section 2.8 above shall be presented in a clear and understandable way.
- 4.2 Information on changes to the maximum level of leverage calculated in accordance with the gross and commitment methods and any right of re-use of collateral or any guarantee under the leveraging arrangements shall be provided without undue delay and shall include:
- (a) the original and revised maximum level of leverage calculated in accordance with Articles 7 and 8 of Level 2 (on gross and commitment methods to calculate leverage)¹¹, whereby the level of leverage shall be calculated as the relevant exposure divided by the net asset value of the AIF;
 - (b) the nature of the rights granted for the reuse of collateral;

¹⁰ For further information, please refer to the FSC information page on "AIFMD – Transparency requirements – Annual report".

¹¹ For further information on the gross and commitment methods for calculating leverage, please refer to the FSC information page on "AIFMD – AIFMs managing specific types of AIFs – AIFMs managing leveraged AIFs".



- (c) the nature of guarantees granted; and
 - (d) details of changes in any service providers which relating to one of the items above.
- 4.3 Information on the total amount of leverage calculated in accordance with the gross and commitment methods employed by the AIF shall be disclosed as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation, or at the same time as the prospectus and offering document and at least at the same time as the annual report is made available according to Article 22(1) of the AIFMD (annual report)¹².

5. Application of implementing measures

Any measures adopted by the European Union Commission under Article 23(6) of the AIFMD will also be applicable.

¹² For further information, please refer to the FSC information page on "AIFMD – Transparency requirements – Annual report".