

# AIFMD – Regulatory Aspects

By Joanne Beiso



The Directive
Small
In-Scope
Depositaries
Next steps

The Directive

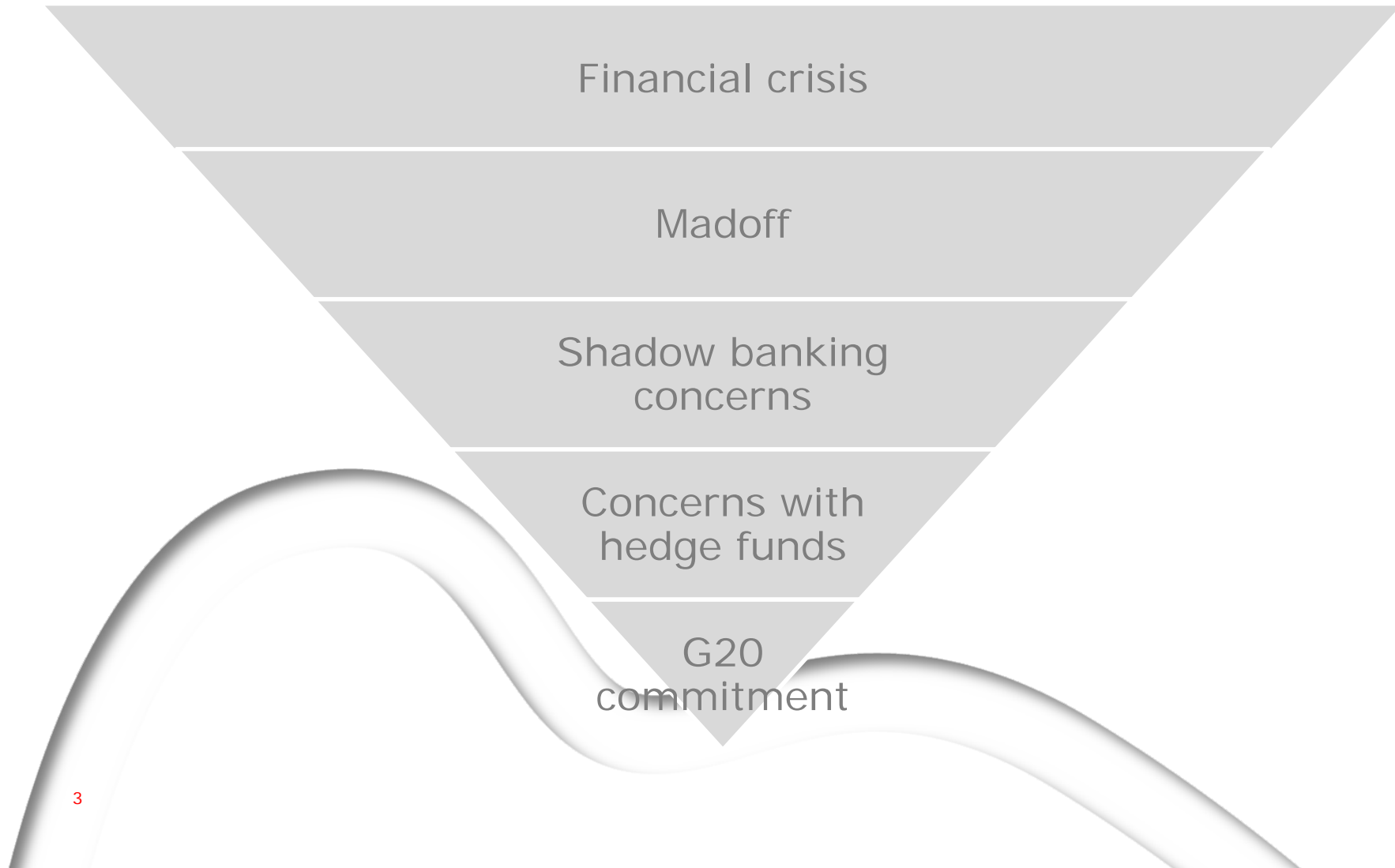
Small

In-Scope

Depositaries

Next steps

# The Directive



The Directive

EU Regulations

ESMA Guidance

EU Country guidance

ESMA / EU Q&A

# The Directive - FSC Plan

21 FSC Information pages

FSC Q&A (Work in Progress)

Registering and Authorising

Returns

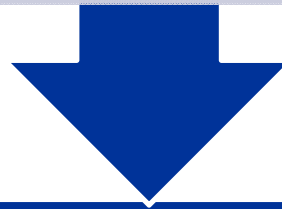
Development of technical areas

Ongoing Supervision

# The Directive – who it applies to

## AIFM:

A company which manages one or more AIFs



## AIF:

A CIS which raises capital from a number of investors to invest as per investment policy for benefit of investors

## The Directive applies to:

EU AIFMs managing 1 or more AIFs

- AIF may be EU or non-EU

Non-EU AIFM managing 1 or more EU AIFs

Non-EU AIFM marketing 1 or more AIFs in EU

- Irrespective if AIF is EU or non-EU.

# Small/In-Scope Threshold

In-Scope

>100 / 500 Million

Small

Opt  
in



# The Directive – registration of AIFs – basic scenario

Gib AIFM

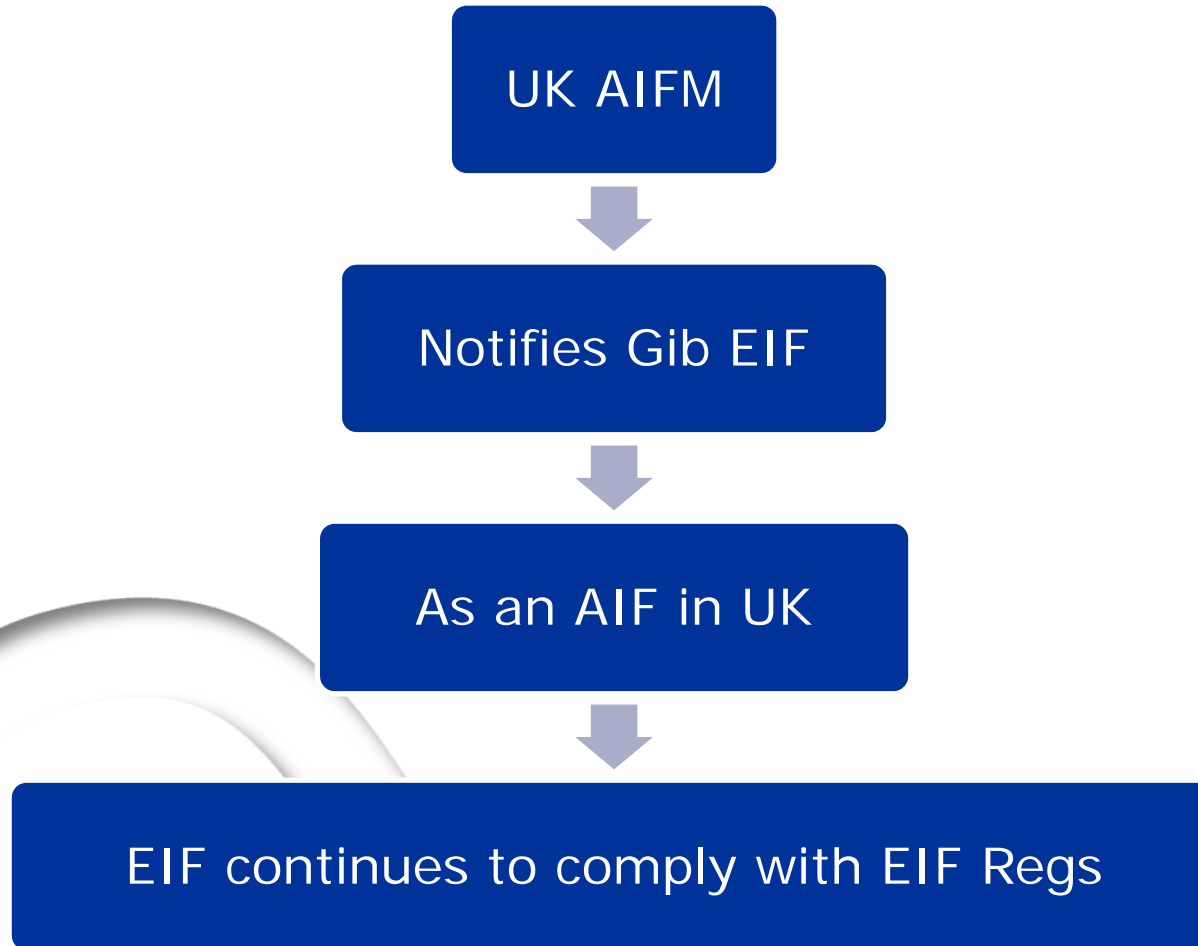


Notifies EIF/Private  
Fund

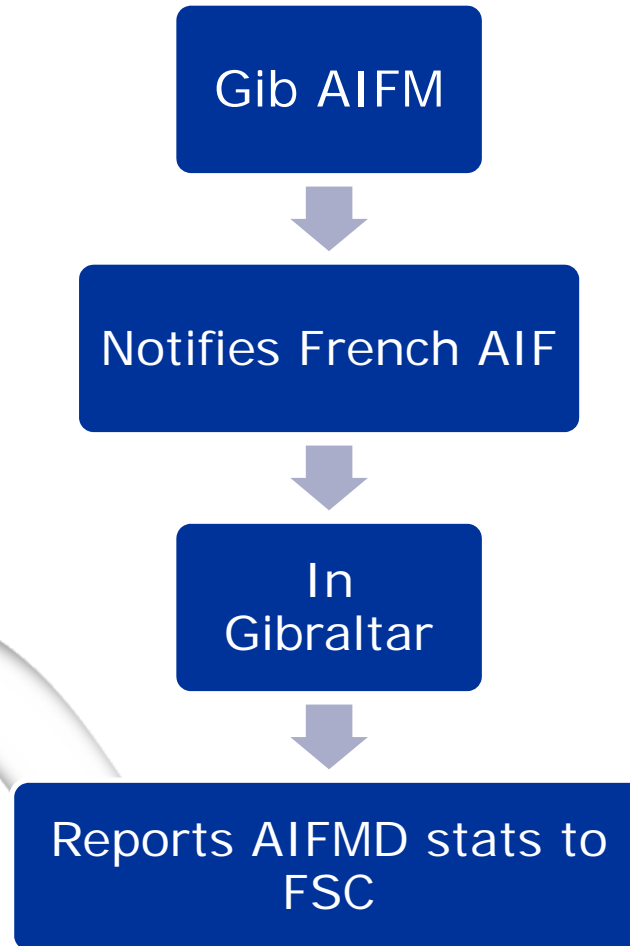


In  
Gibraltar

# The Directive – registration of AIFs – external manager



# The Directive – registration of AIFs –external fund



# Small AIFM - Calculating threshold

Total assets under management

Aggregate

Netting of positions

Derivatives and futures funds

Ensure calculations as per Annex II Regulations

## Small AIFM - Breaches of threshold

< 3 mths

- Notify FSC
- Justify that temporary nature
- Prove that resolved within 3 months

Not  
temporary

- Application within 30 days

# Small AIFM - Marketing

Cannot Passport

Market via NPPRs

Active or Passive?

Professional client criteria higher than EIF

Check National regimes

AIF is self managed?

Non EU AIFM  
registers Gib AIF

## Information required on each AIF e.g.

Hedge fund  
strategy

- Equity: Long Bias
- Credit: Long/Short

Exposures  
concentration

- Main instruments
- Geographical focus

Individual  
exposures

- Physical Timber
- Convertible bonds

Risk Profile

- Investor liquidity profile
- % of repo trades cleared



# Small AIFM -Requirements

Registration by 22 July 2014

- Recommend by 31<sup>st</sup> December 2013

Ongoing monitoring of threshold

Annual Return as per Annex IV

ESMA Format

EIFs continue to meet requirements

## Small AIFM – Next Step

Prepare for FSC reporting

Monitor national private placement regimes

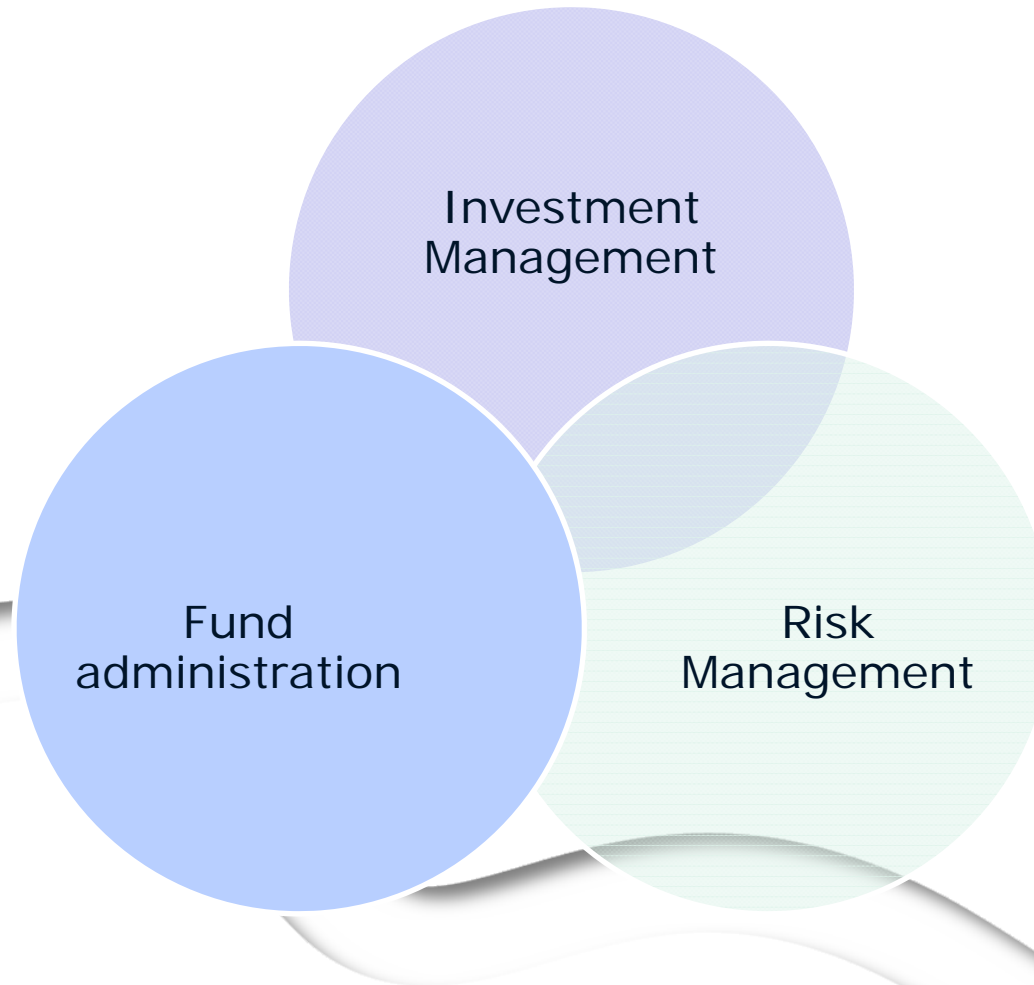
Ensure Threshold is calculated appropriately

Consider 2018 proposals



Financial Services  
Commission

# In-Scope AIFM



# In-Scope Risk Management function

Identify,  
measure,  
manage and  
monitor the  
risks AIFs  
may be  
exposed to

Ensure  
within limits

Liquidity  
Management

# In-Scope Passporting

AIFM wants to market shares  
or units in AIFs

AIFM notifies FSC of each AIF

Within 20 days FSC provides  
confirmation

AIFM starts marketing AIF

# In-Scope Non-EU AIFM managing Gib AIF

22 July  
2013

- Market AIF under NPPR
- Meet transparency requirements
- Co-operation agreement needed

Mid-2015

- Continue as above
- Or apply for authorisation
- Co-operation agreements etc needed

2018

- NPPRs may be terminated

## EIF - 20 days to market in EU

Day 1

- AIF notified as EIF and passporting documents submitted

Day 10

- EIF registered

Day 20

- EIF advised by FSC it can passport

# In-Scope - Capital – Initial own funds

E125,000  
(min  
capital)



Value of  
AIF >  
E250m  
0.02%  
(max  
E10m)

> 1/4  
overheads



# Capital – Additional Capital

PI

or

Qualitative  
requirements

Excess  
Covered by  
own funds

Min 0.01%

## In-Scope remuneration e.g.

No guaranteed variable remuneration

Based on longer term performance

- 3 to 5 years

50% variable remuneration in units of AIF

- Unless AIF < 50% of AIFM portfolio

Annual disclosures by AIFM or AIF

# In-Scope Delegation

Justifiable to FSC

Liability to AIF/Investors not affected

Sub-delegation

Letter box entity not allowed.

- AIFM has to be able to take decisions
- AIFM activity delegated < activity of AIFM

# In-Scope Transparency

Annual  
Report  
disclosures

Disclosure  
to  
investors

Reporting  
to FSC

# In-Scope Operating conditions

## Due diligence:

- selection of investments
- investing in assets of limited liquidity
- Appointment of counterparties and prime brokers

## Resources

## Acting honestly and fairly

## Inducements

## Execution rules

# In-Scope – other requirements

## Conflicts of Interest

- Identify, prevent, manage, monitor and disclose

## Organisational Requirements

- Permanent compliance internal audit

## Valuation

- Independent external valuer
- Functionally independent team of AIFM

## Leveraged AIFs

- Rules on calculating leverage

# In-Scope AIFM – Next Step

## Prepare for AIFMD Compliance

- Capital, transparency, remuneration etc
- Prepare for AIFMD compliant reporting

## Do you need to restructure the management group?

- Ensure functionally separate units eg risk management and investment management

## Start negotiations with depositaries

## Consider changes required to AIFs

# In-Scope – Application process

Universal Application Form

Authorisation Profile

IQ for new notifiable positions

Material Document checklist

Returns

Business plan



# In-Scope – Application – Information needed

Identify Individuals in structure

How intend to comply with obligations

Confirmation that have e.g. remuneration policy

Delegation arrangements

Sufficient capital/own funds

# Application – Investment strategy

Types of funds

Leverage policy

Risk profiles

Countries where AIFs will be established

Arrangements for appointment of depositary

How meeting transparency requirements

# Application - Timings

Standard timeframes:

18  
weeks

Existing licensee applying  
within transitional period

14 weeks

## In-scope AIFM -ongoing regulatory returns

AIFM Quarterly financial returns

Report on AIFs managed

Updates on changes to eg policies

# In-Scope reporting obligations on AIFs

Main instruments traded

Actively traded markets

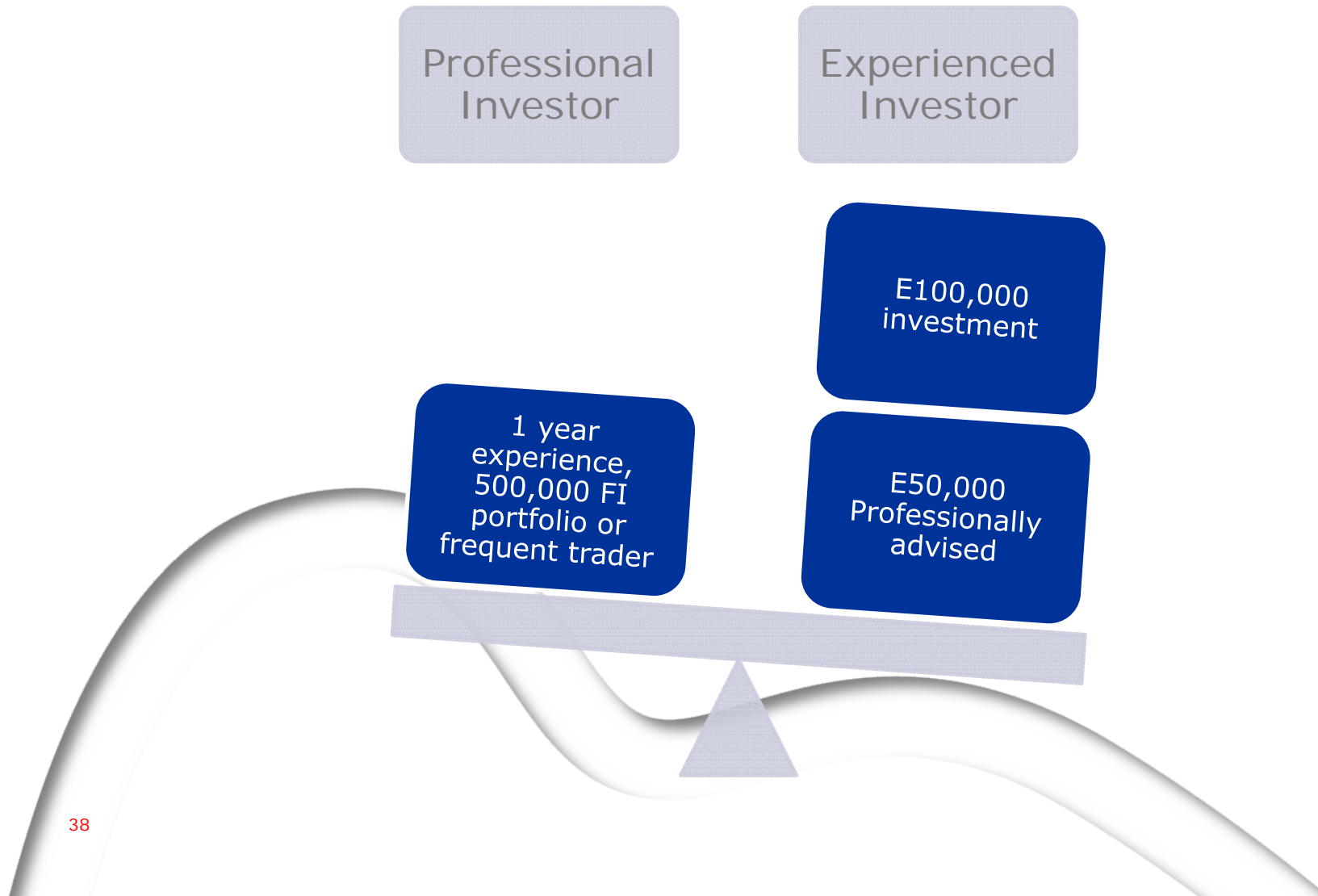
Principal exposures

Risk profile of AIFs

Results of stress tests

Details on leverage

# In-Scope vs EIF Regulations



# IN-Scope vs EIF Regulations

Depository  
requirements  
for closed  
funds

Pre-notification  
of material  
changes

Marketing

Extra  
disclosures in  
PPM

# Depositaries

## Private Equity AIF (closed)

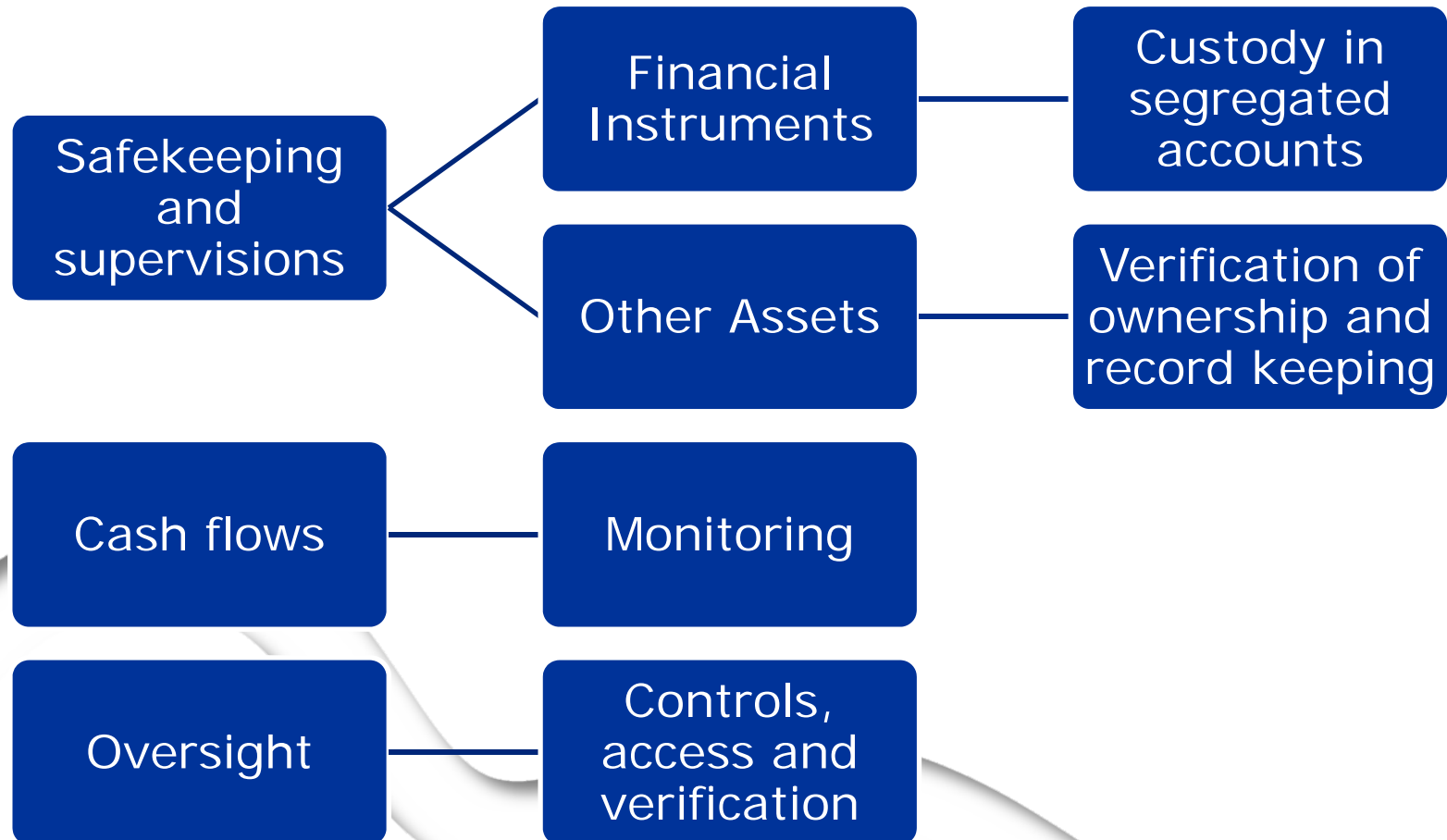
- Depositary is regulated business (no need to be bank or MiFID firm)
- Only some provisions apply

## Other AIFs

- Depositary is financial regulated institution
- Full provisions apply



# Depository - Requirements



# When must depositary return identical held-in-custody FIs/corresponding amount

Is the Event External?



Is the event beyond its reasonable control?



The consequences could NOT have been avoided with reasonable efforts?

# Depositary - Next Step

## Allocation of responsibilities

- Decision making protocol in different scenarios e.g. New markets, new asset classes

## Information flow

- Ensure sufficient reporting to Depositary from AIFM and third parties

## Documentation

- Processes, Legal agreements, PPM disclosures and to Competent authorities

# Depositaries – ‘application’

Able to make information available to FSC

How cash flow will be monitored effectively

Safe-keeping assets maintained

Oversight duties being put in place

Delegation of duties

Liability effects on depositary

Information Pages issued

Q&A 'Work in Progress'

Getting message to those affected

Understand interest in AIFMD

# FSC Next stage

## Application forms

- AIFMs: Small & In-Scope
- AIFs: Small and In-Scope

## Returns

- Own funds - Quarterly
- AIF reporting

## Further technical information

- Remuneration
- Depositary
- Delegation

## EU – effective 22 July 2013

Topic	EU Reference number
European Social Entrepreneurship funds	346/2013
European Venture Capital Funds	345/2013
Establishing the procedure for AIFMs which choose to opt in	447/2013
Member state of reference	448/2013

# EU Coming very soon

Topic	Directive Reference:	Implementation Date
Over reliance on credit ratings	2013/14/EC	20 days after being gazetted
Guidelines on sound remuneration policies under the AIFMD	ESMA/2013/201	2 months after being published in various languages
Guidelines on key concepts of the AIFMD and types of AIFMD	ESMA/2013/600	2 months after being published in various languages



# EU next few steps

Topic	Progress
Rules for the treatment of Third Country Entities	Expected Mid - 2015
ESMA Q&A	TBD
Consultation paper on ESMA's guidelines on AIFMD reporting obligations under Articles 3 and 24 of the AIFMD	Consultation closes 1/7/2013

# Summarising EU - Next steps

ESMA guidance on various areas

Developments in other  
jurisdictions

FSC information/guidance

## Next step for you

How does AIFM affect you?

Research and Compile information

Register or apply for authorisation.



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# Thank You

## Questions?