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Markets Prime Finance

AIFMD for Non-EU Managers: *The Road Ahead*

A Practical Guide for 2014

Passion to Perform

On-the-Radar
Prepared by Deutsche Bank Hedge Fund Consulting

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A Review of AIFMD for Non-EU Managers

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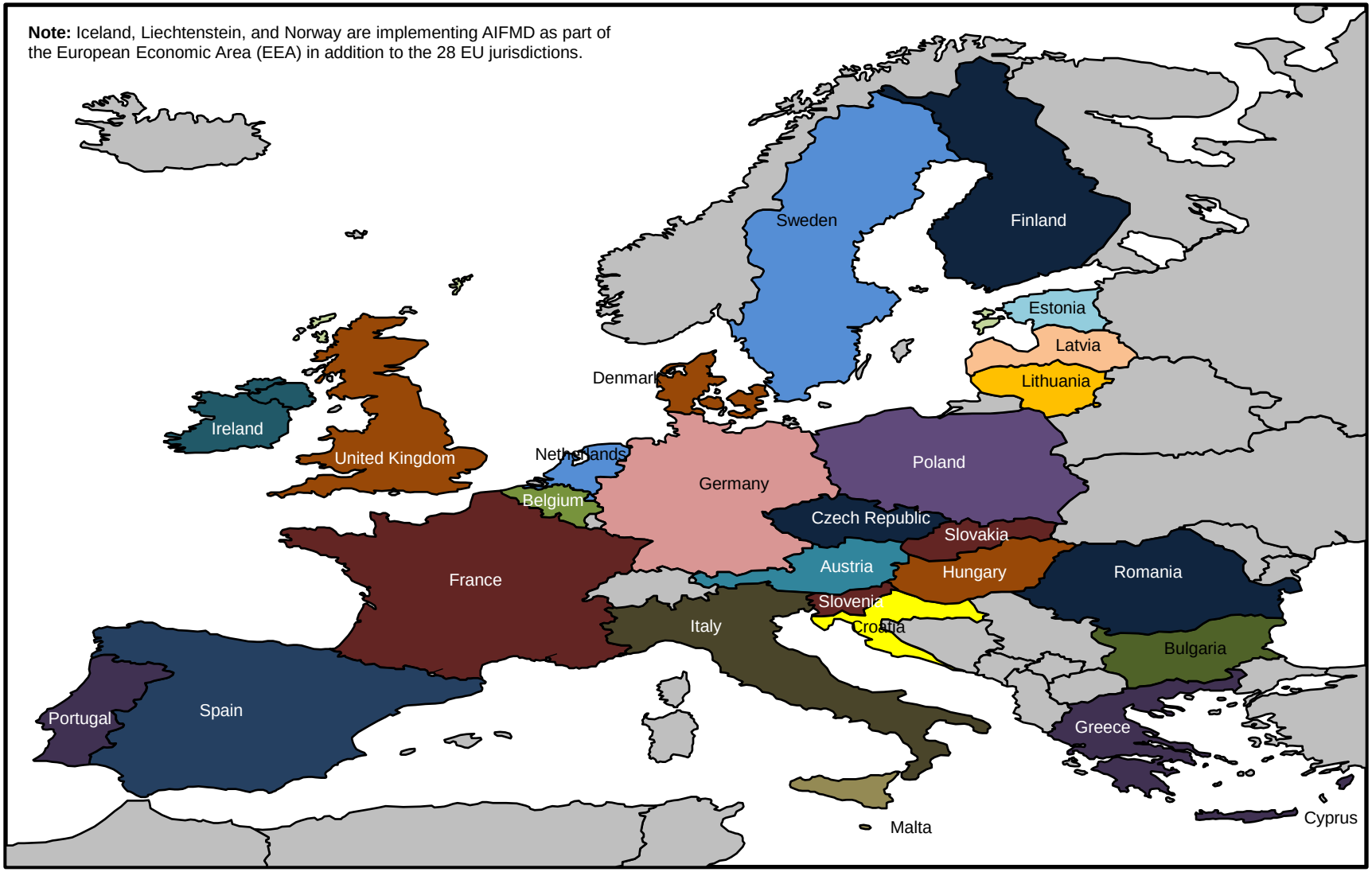
European Union Map



Overview of AIFMD

- **What is AIFMD?**

— The Alternative Investment Fund Managers Directive (AIFMD) took effect on 22 July 2013 and marked the start of a new regulatory regime for private investment funds, introducing a new suite of regulations for private fund managers seeking to operate within the EU.

— AIFMD regulates the management and marketing in Europe of Alternative Investment Funds (AIFs) by Alternative Investment Fund Managers (AIFMs). The Directive regulates the activity of a (i) EU AIFMs, (ii) Non-EU AIFMs managing EU AIFs and (iii) Non-EU AIFMs managing non-EU AIFs that are marketed in the EU.

- **What is an AIFM?**

— AIFMD defines AIFM as the legal person whose business is managing one or more AIFs.

- **What is an AIF?**

— An AIF is any collective investment undertaking whether open-ended or closed-ended (wherever it may be domiciled) which: (i) raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) is not a UCITS fund.

— The definition of AIF under the directive, therefore, would include most hedge funds and covers both feeder funds and master funds.

- **What is "marketing"?**

— The Directive defines "marketing" 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."

Source: Official Journal of the European Union, June 2011, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF

Does AIFMD apply?

1. Are you an AIFM domiciled in an EU jurisdiction?

- If **YES**, AIFMD applies
- If **NO**, go to the next question

2. Do you manage an EU domiciled AIF?

- If **YES**, AIFMD may apply
- If **NO**, go to the next question

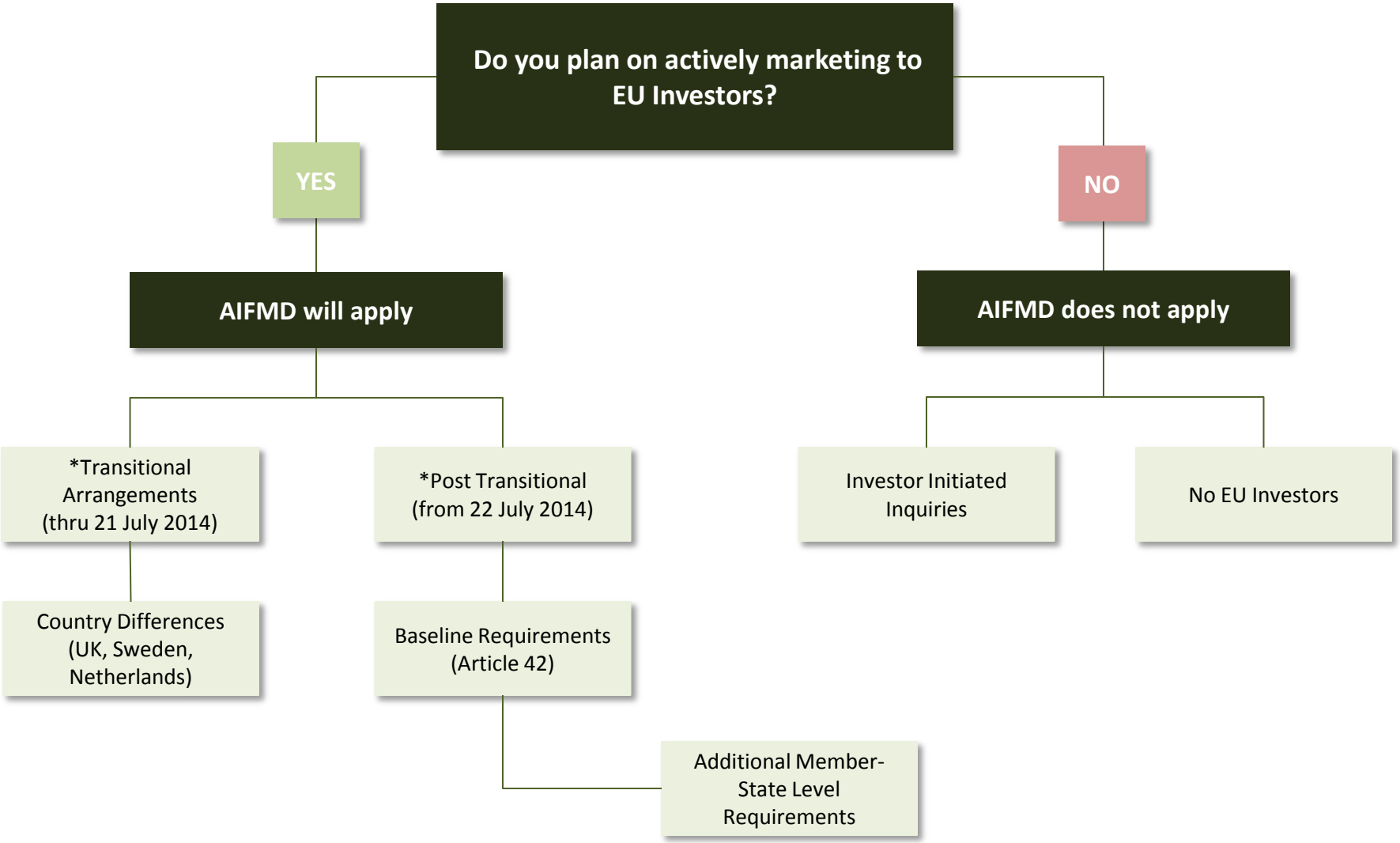
3. Are you a Non-EU AIFM that manages a Non-EU AIF with EU domiciled investors?

- If **YES**, go to the next question
- If **NO**, AIFMD should not apply, unless you market to EU investors in the future

4. Do you plan to raise funds from EU domiciled investors or additional funds from your existing EU investors?

- If **YES**, you will need to determine how to comply with AIFMD
- If **NO**, AIFMD should not apply

AIFMD Decision Tree for Non-EU Managers



*Not all countries have adopted transitional arrangements. Some countries that have adopted transitional arrangements have expiration dates prior to 21 July 2014.

Overview of Capital Raising Choices Under AIFMD

Investor Initiated Inquiries

— This refers to the situation where the investor unilaterally contacts the manager to inquire about an investment without any prior affirmative action (directly or indirectly) by the manager.

National Private Placement Regime (NPPR) + AIFMD Minimum Requirements

— Absent a transitional arrangement (as discussed below), non-EU managers that intend to solicit investments from EU investors must do so under the National Private Placement Regime (NPPR) of each EU jurisdiction where they market, subject to the minimum requirements of AIFMD.

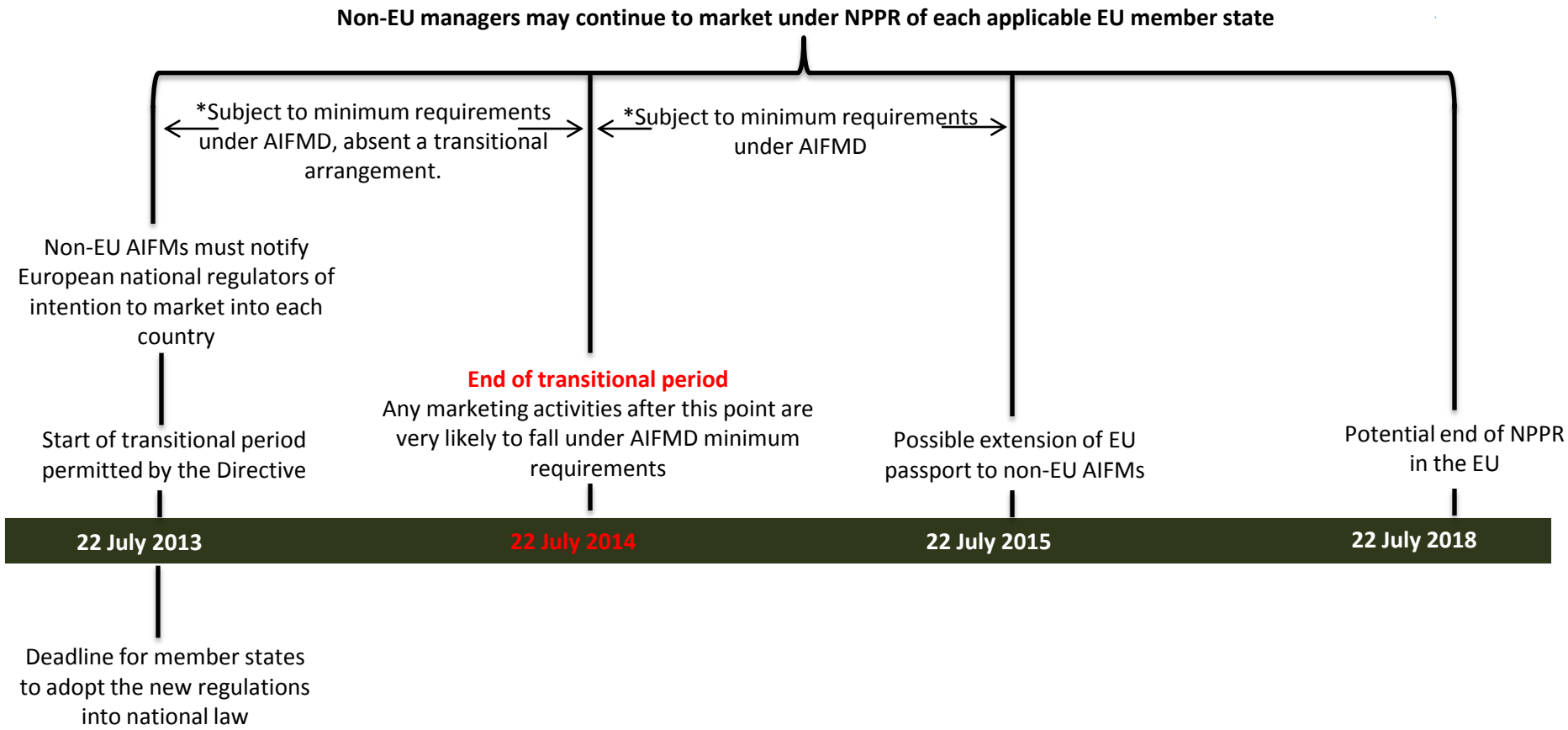
— Currently EU AIFMs marketing an EU AIF can take advantage of a passport whereby they do not need to seek approval in each separate member state for marketing the AIF. In mid-2015 a determination will be made as to whether the EU passport will be available to non-EU AIFMs. If passports are made available, non-EU AIFMs utilizing such passports would need to comply with all of the requirements under the Directive.

— It is important to note that certain jurisdictions do not have an NPPR in place to permit marketing of private funds.

Transitional Arrangements

— Transitional arrangements have been adopted by some EU member states for a maximum of 12 months ending on 22 July 2014. Non-EU AIFMs marketing to EU investors where a transitional arrangement has been adopted **may** not need to comply with the minimum requirements set forth in the Directive during the transitional period (e.g., UK). After the transitional periods end, non-EU AIFMs will need to comply with the Directive's minimum requirements.

If AIFMD applies, when does it apply?



*See pages 18-22 for a list of minimum requirements under AIFMD

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Investor Initiated Investments

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Investor Initiated Investments – Key considerations

Regulatory Risk

— This approach to capital raising from EU investors necessitates careful consideration of a non-EU manager's controls around the capital raising process in order to provide demonstrable and unambiguous evidence to a regulator or investor that an investment was not the result of marketing, directly or indirectly.

Strategic Viability of Relying on Investor Initiated Investments

— Relying exclusively on investor initiated inquiries may impose significant hindrances on the ability of the manager to quickly raise additional capital thereby creating a risk to a fund's overall success and performance.

— The Directive does not specify penalties or sanctions for noncompliance with marketing restrictions set forth in the Directive. Each EU member state will determine its own regime for breaches of AIFMD.

— In certain jurisdictions, the consequences for a breach of AIFMD can be significant. For example, in the UK, an investor would be able to rescind its investment in the AIF at par and the AIFM could face criminal charges, including possible fines and imprisonments.

Investor Initiated Inquiries - Controls

Existing and Prospective Investor's Domicile: Identify the domicile for all existing investors and active prospective investors.

— Note that the residence or jurisdiction of an investor is not determinative of the investor's domicile for purposes of AIFMD.

— This will require careful analysis of a funds current and prospective investor population, including investors to whom the AIFM has sent communication prior to 22 July 2013.

Marketing Materials: Confirm that any materials sent to an EU investor cannot be construed as marketing materials in the relevant jurisdiction for purposes of AIFMD, unless such EU domiciled investor, on its own initiative, has provided prior written notice that they wish to receive solicitation or marketing materials.

Policies and Procedures: Update policies and procedures to ensure manager personnel may not have discussions with or solicit investments from an EU investor unless the investor initiates the inquiry.

— Staff should acknowledge your revised policies and procedures in a written certification. Copies of all certifications should be maintained by the AIFM.

— Policies relating to use of third party marketers needs to be updated.

Website Permissions: Restrict access to certain information on your website for those EU investors or prospective EU investors that have not indicated in writing they wish to view such materials at their own initiative.

Investor Initiated Inquiries – Controls *(Cont'd)*

Third Party Relationships: Review relationships with third parties, including third party marketers, placement agents, and capital introduction teams.

- Confirm that any third party marketers or other solicitation agents have comparable controls to those of the manager for ensuring that investors are not sought in violation of the AIFM's policies and procedures for obtaining investments. Consider having any such agents sign an acknowledgment that they will adhere to the firms policies for dealing with EU investors.
- ***Deutsche Bank Capital Introduction:*** Deutsche Bank has established the following three pronged approach to evidence that an inquiry was initiated by an investor:
  - ***Modified Investor Certificates:*** Certificates signed by investors to participate in capital introduction services have been modified to include language that requires the investor to certify that information provided to investors was provided upon the investor's request.
  - ***Record Retention:*** Deutsche Bank's Capital Introduction team records all investor emails / communications in order to evidence the origination of an inquiry.
  - ***Event Websites:*** The websites for Deutsche Bank Capital Introduction events contains specific wording in a number of different areas on the site that highlights that to investors that all information request is at the investor's initiative.

Infrastructure and Technology*:* Ensure you have the compliance infrastructure and technology to track and record that an EU investor's investment only occurred as a result of an investor initiated inquiry.

- Email tracking, record retention (oral and written communications), distribution lists, CRM application, regular reviews of investor lists, and on-going compliance testing around investor communications.

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Marketing Under AIFMD for Non-EU Managers

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The Divergent Approaches to Marketing*

— Individual EU member states have taken varying approaches to marketing without a passport following the implementation of AIFMD. The UK, for example, has a transitional period running until 22 July 2014 whereby AIFMD's requirements will not apply until such date **if** marketing of an established AIF had already taken place pre 21 July 2013. Other jurisdictions have implemented a more restrictive interpretation of AIFMD.

— Non-EU AIFMs will need to understand and consider each member state's approach to marketing without a passport. In particular, certain jurisdictions have implemented AIFMD requirements that are significantly above the minimum set forth in the Directive.

More Permissive
- UK
- Netherlands

Less Permissive
- Finland
- Sweden
- Norway

Restrictive
- Germany

Highly Restrictive
- Italy
- Spain
- France

*See Exhibits 1 - 7 for a country-by-country summary of AIFMD marketing issues in Switzerland and six other EU jurisdictions.

Marketing Under AIFMD – Key considerations

Transitional Arrangements

— Certain jurisdictions have implemented transitional arrangements whereby AIFMD requirements (including minimum requirements) will not apply.

  — Only a limited number of jurisdictions have implemented transitional arrangements.

  — All transitional arrangements under AIFMD must terminate no later than **22 July 2014**.

  — Check with local counsel as to the requirements of any transitional arrangements.

National Private Placement Regimes (NPPRs)

— At a minimum, any marketing under transitional arrangements will still require compliance with the NPPR in each relevant jurisdiction. It is important to note that certain jurisdictions do not have NPPR in place to permit marketing.

— Seek local counsel advice regarding requirements of any NPPR.

EU AIFM with EU AIF

— Consider setting up an EU AIFM that manages an EU AIF in order to take advantage of the marketing passport.

Post-Transitional Arrangements / AIFMD Compliant Marketing

— Marketing in such countries after the expiration of transitional arrangements, or in countries that did not have transitional arrangements, will necessitate compliance with AIFMD's minimum requirements as well as ensuring AIFMD cooperation agreements are in place.

AIFMD Applicability Sub-Thresholds

— If the global assets under management (AUM) of all AIFs of the non-EU AIFM (including leverage) is below the AIFMD threshold of EUR100 million then only limited disclosure is required.

— If a non-EU AIFM is below the sub-threshold, seek local counsel advice regarding any notification or registration requirements.

AIFMD Requirements – Overview

	Investor Disclosure	Annual Report	Regulatory Reporting (Annex IV)
Overview	Requirement to provide investors with a disclosure document before investment; most likely covered by a private placement memo.	Requirement to prepare an annual report for each AIF marketed to EU investors. This filing includes *remuneration disclosure* among other things.	Form PF-like filing made to national regulators that covers matters such as leverage, exposures and concentrations.
Timing	From 22 July 2013, non-EU AIFMs will need to comply with investor disclosure requirements under the Directive prior to an investment in the AIF.	Must be filed within 6 months following an AIF's financial year-end. This means for a fund with a financial year-end of 31 December you must file by 31 June the following year.	Reports must be submitted to the regulator within 30 calendar days of the period end (45 days for Fund of Funds). Reporting may be annually, semi-annually or quarterly depending on the level and nature of assets under management. Where necessary, the competent authorities of the home Member State may require information in addition to that described below on a periodic as well as on an ad-hoc basis.
Filing with National Regulators	N/A (Subject to local NPPR requirements)	The annual filing must be filed with each national regulator where the AIF was marketed regardless of whether an investor actually invests and should be available to investors upon request.	Reporting must be provided to the competent authorities of the AIFM's home Member State on the principal markets and instruments in which it trades on behalf of the AIFs it manages.
AIFMD Article (Level 1 Directive)	**Article 23:** A detailed list of requirements related to investor disclosure can be found in Article 23. Many of the requirements are covered in the offering document for the fund. Additional requirements not covered in the offering document can be supplemented with an AIFMD disclosure document or disclosed in a monthly/quarterly investor newsletter.	**Article 22:** A detailed list of requirements related to investor disclosure can be found in Article 22 including remuneration disclosures (Article 22 of AIFMD and Chapter V of Regulations – Articles 103-107). Check that any annual report prepared complies with the items contained in the Level 2 Regulation and prepare remuneration disclosure. Start identifying staff who will fall within the categories of "Identified Staff".	**Article 24:** A detailed list of requirements related to investor disclosure can be found in Article 24.

AIFMD Requirements – Investor Disclosure

Gap Analysis: An analysis between existing investor disclosures and AIFMD investor disclosure requirements should be conducted for purposes of identifying any additional AIFMD disclosures.

AIFMD minimum disclosure requirements are as follows:

I. ☐ Description of the following items:
- Investment strategy and objectives
- Legal structure and applicable law
- Key service providers and their duties (e.g., prime broker, auditor, administrator)
- How the fund will cover professional liability risk (e.g., insurance, indemnity)
- Valuation procedures and pricing methodology
- Liquidity risk management, including redemption rights
- All fees, charges and expenses borne by investors
- Side letters and other preferential arrangements with investors
- Subscription terms

II. ☐ Copy of the Annual Report (See slide 20 for a more complete description)

III. ☐ Latest NAV of the fund

IV. ☐ Historical performance data (where available)

V. ☐ Arrangements made by the depository to contractually discharge itself of liability in accordance with Article 21 (13)

VI. ☐ Periodic disclosure:
- Percentage of AIF's assets subject to special arrangements arising from their illiquid nature
- New arrangements for managing the liquidity of the AIF
- Current risk profile and risk management systems employed

VII. ☐ Recurring Disclosure:
- Maximum level of leverage
- Total leverage employed

AIFMD Requirements – Annual Report

The annual report requires an AIFM to prepare and file the following items with each applicable national regulator:

I. ☐	**A balance-sheet or a statement of assets and liabilities**
II. ☐	**An income and expenditure account for the financial year**
III. ☐	**A report on the activities of the financial year**
IV. ☐	**Any material changes in the information listed in Article 23 (i.e., investor disclosure documents) during the financial year covered by the report**
V. ☐	**Remuneration Disclosures (For a complete list of Remuneration Disclosures, see next slide)**

AIFMD Requirements – Annual Report: *Remuneration*

AIFMD has set forth key remuneration disclosure requirements regarding compensation in the annual report.

Until a non-EU AIFM obtains a marketing passport (potentially in the 4th quarter of 2015 at the earliest) they will only be subject to the disclosure requirements in their annual report.

Disclosure Requirements

Non-EU AIFMs will be required to disclose in the annual report the following information:

Aggregate Staff Remuneration	Remuneration Attributable at Fund Level	Senior Management Remuneration	Description of Remuneration Material
Total remuneration for the financial year, split into fixed and variable remuneration, paid by the fund manager to its staff, and the number of staff who received such remuneration.	To the extent that the information exists or is readily available, whether the total paid remuneration relates to the entire staff of the fund manager or only to those staff who are fully or partly involved in the activities of the fund, as well as the total remuneration paid to the staff of the fund manager that is attributable to each fund.	**Total** remuneration for the financial year, split into fixed and variable remuneration, paid by the fund manager to senior management and members of staff of the fund manager whose actions have a material impact on the risk profile of the fund. Where relevant, disclose any incentive allocation or carried interest distributed by the fund.	A general description of the financial and non-financial criteria of the fund manager's compensation policies and practices for relevant categories of staff so that investors may assess the incentives created.

AIFMD requirements – Regulatory Reporting (Annex IV)

A summary of key similarities and differences between Form PF and Annex IV set forth in **Exhibit 8 (Page 35)**. Given the tight timing (one month for funds with an additional 15 days only for funds of funds), consider systems and procedures that will need to be put in place in order for the reports to be generated in the time required.

Below is a list of regulatory reporting requirements:

I. Information regarding assets, markets, and exposures, including:

- Main instruments traded & markets where the AIFM trades or is a member.
- Exposures and most important concentrations of each AIF managed

II. For each EU AIF managed and for each AIF marketed in the EU the following must be provided:

- Percentage of AIF's assets, subject to special arrangements arising from their illiquid nature.
- New arrangements for managing the liquidity of the AIF.
- Current risk profile and risk management systems employed.
- Categories of assets traded.
- Results of stress tests performed in accordance with point (b) of Article 15 (3) and the second paragraph of Article 16 (1).

III. Upon request, the AIFM is required to provide the following:

- Annual report of each AIF managed by the AIFM and of each AIF marketed by it in the EU.
- Quarter end detailed list of all AIFs which the AIFM manages.

IV. For AIFMs utilizing leverage, requirements for reporting include:

- Break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives, as well as the extent of assets reused.
- Identity of five largest sources of borrowed cash or securities for each of the AIFs managed and the amounts of leverage received from each source.

AIFMD requirements – Regulatory Reporting (Annex IV) *(Cont'd)*

Frequency of Filing*	
Annual	The AIFM for any AIF which invests in non listed companies and issuers in order to obtain control
Semi Annual	The AIFM for any AIF with €100M – €1B euro AUM (leveraged)**
Quarterly	Each AIF with €500M - €1B leveraged AUM with no redemption rights within 5 years
Quarterly	Each AIF with > €1B AUM

**Likely that AUM includes only the funds marketed in the EU, not the managers total AUM*
*** If AUM breaches the threshold more than 3 months, the AIFM must notify the regulator and seek authorization within 30 calendar days*

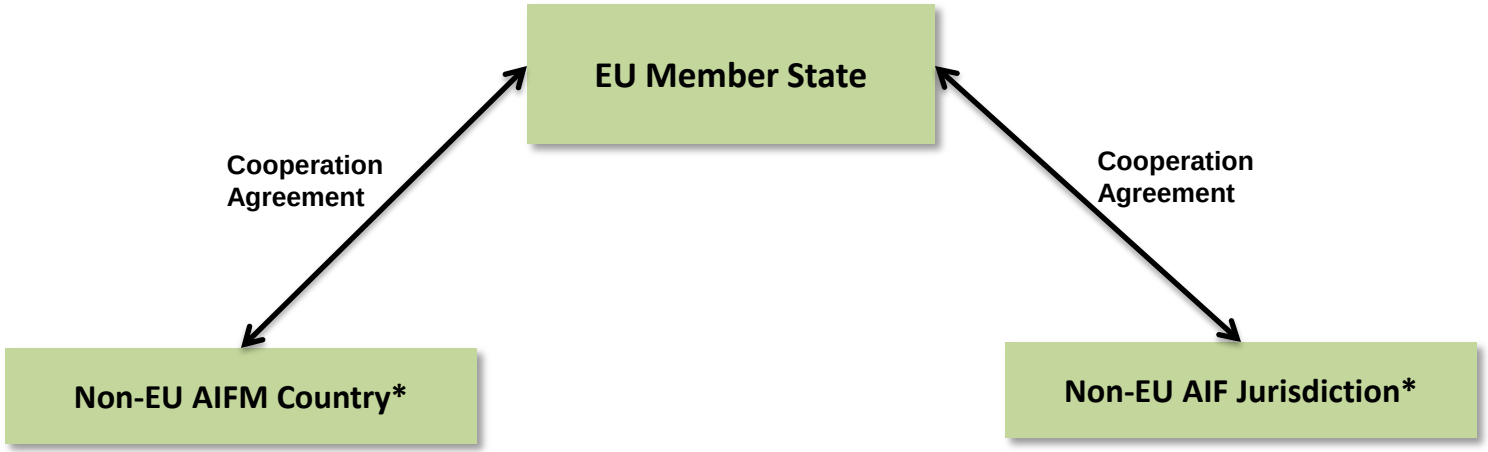
- ESMA has published a final reporting template, both in Excel and XLS/XSD forms.
- The new template now includes vega stresses, net FX delta, net commodity delta and VAR

Sources: "Compilation of EU Commission delegated regulation supplementing the AIFMD" by Elvinger, Hoss & Prussen; "Transparency and Reporting" PWC, March 2013

Cooperation Agreements & Non-Cooperative Countries

I. Cooperation Agreements

— The Directive also requires cooperation agreements between the jurisdiction of both the non-EU AIF and non-EU AIFM with the EU jurisdiction where an non-EU AIF is marketing.



II. Non-Cooperative Countries

— The third country where the non-EU AIFM or the non-EU AIF is established cannot be listed as a Non-Cooperative Country and Territory by FATF.

— Most EU member states have signed cooperation agreements with the SEC, CFTC, and CIMA (Cayman Island Monitory Authority).

— A full list of cooperation agreements can be found at http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities.

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Exhibits

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Exhibit 1 – Country-by-Country-Comparison: *UK*

Overview

— Third largest pension market with USD$2.7 trillion in assets.

— Approximately 5% allocation to hedge funds, up from 1% in 2006, and expected to grow significantly.

— Transitional arrangements are in place until 21 July 2014.

Transitional Arrangements*

Key conditions for utilizing the transitional arrangements:

— An AIFM must be managing an AIF that was launched prior to 22 July 2013 .

— For non-EU AIFMs, the AIFM must have marketed and AIF somewhere in the EU prior to 22 July 2013.

— Territorial scope only applies if the marketing takes place in the UK and the investor has a registered office or domicile in the EU.

— Managers must still comply with the existing UK Financial Promotion regime during the transitional period.

*Once a manager is authorized under AIFMD, they will not longer be eligible to take advantage of transitional arrangements.

Investor Initiated Inquiries

— Limited advice has been given by regulators regarding investor initiated inquires.

— Initial drafts of the Directive proposed to inhibit investor initiated inquiries.

— Managers must ensure and be in a position to prove that investor initiated inquiries originated solely from the investor.

— Potential consequences for breaching the Directive can be significant and include criminal charges, fines and imprisonment.

— Fund summaries or fact sheets in the UK should not constitute marketing materials; only fund offering documents should constitute marketing. In addition, information regarding the management company (as opposed to the fund-specific information) should not be considered marketing.

— **Consult with your UK legal advisor for fact-specific queries regarding what constitutes marketing materials.**

Exhibit 2 – Country-by-Country Comparison: *Netherlands*

Overview

- The Dutch pension market is the sixth largest in the world and the second largest in Europe, with an estimated $1.2 trillion in total assets [1].
- The Netherlands is home to some of Europe's largest hedge fund investors, with the private sector pension funds more prevalent and active.
- The majority of Dutch allocators oversee mature and sophisticated hedge fund portfolios.
- Transitional arrangements are in place until 21 July 2014.

Transitional Arrangements

- The transitional regime allows AIFMs on the basis of a license or under an exemption to continue their business without a license or registration prior to 22 July 2014.
- Only AIFs that have marketed in the Netherlands prior to 22 July 2013 can benefit from transitional provisions.
- Only if the AIF performs new activities must it obtain a license immediately. The Dutch authority for financial markets has indicated that expanding the scale for authorized activities under the same supervisory regime will not be considered to be new activity. For example, if prior to AIFMD, an AIF was relying on the exemption of only offering units to qualified investors, then this activity may continue and they may begin marketing a new fund to those same qualified investors, but the new units may not be offered to retail investors.
- Managers may rely on exemptions through the transitional arrangement. The most frequently used exemptions include:
  - An offer in The Netherlands to fewer than 100 persons;
  - An offer in The Netherlands of interests solely to qualified investors; or
  - An offer in The Netherlands of interests with a minimal subscription of at least EUR 100,000.

Sources: [1] Towers Watson "Global Pensions Asset Study 2013"

Exhibit 2 – Country-by-Country Comparison: *Netherlands (Cont'd)*

Requirements

— Private placement regime can be used to market in to the Netherlands, however cooperation agreements will be needed. Further guidance is still expected.

— Designated US state level regimes may be an option for US AIFMs: Prior to 22 July 2013, managers from investment institutions incorporated in a state designated by the Dutch Minister of Finance as having an adequate supervisory regime did not need to obtain a license prior to offering units in the Netherlands.

  — This designated state exemption remains available after 22 July 2013 for AIFMs from Guernsey, Jersey and SEC-registered AIFMs from the US.

  — This exception covers both offerings to professional investors as well as retail investors in the Netherlands.

Investor Initiated Inquiries

— Investor initiated inquiries may be an option, however, the Netherlands has taken a conservative view.

— If the investor request is more open, probably revert with general information about manager and invite the investor to revert with a specific request for a fund.

What is considered marketing?

— An "offering" under Dutch law is one that makes a sufficiently specific proposal to act as a counterparty under a contract regarding units in an AIF.

— Proposals must have sufficient detail about the product, including price, and thus result in an agreement if the counterparty accepts. In practice, this means that an investor should be able to speak about the manager, strategies, and performance without triggering marketing.

Exhibit 3 – Country-by-Country Comparison: *Switzerland*

Overview

— Seventh largest pension fund market with USD$732 billion and over 2,500 pension funds[1]

— No requirement to register the fund with any authority in Switzerland.

Requirements

As of March 1, 2013 Switzerland initiated two new investor classifications:

— **Regulated (supervised) qualified investors** are Swiss regulated financial intermediaries. There are no requirements to appoint a Swiss representative and Swiss paying agent both now and post-2015.

— **Unregulated qualified investors** includes pension funds and companies with professional treasury management and high net worth individuals who are subject to specific conditions to be qualified investors.

— No later than 28 February 2015, non-Swiss private funds being distributed to "unregulated qualified investors" must have:

— Appointed a Swiss representative and a Swiss paying agent. The Swiss representative will have to enter into a distribution agreement with the non-Swiss distributor of the relevant fund;

— Update fund documentation to indicate the details of the Swiss representative and the Swiss paying agent;

— The aforementioned requirements apply to non-Swiss funds, regardless if they were distributed in Switzerland prior to or after 1 March 2013.

What is considered marketing?

— Marketing activities / distribution into or from Switzerland.

— Any form of proposal or marketing activities, which aim at the subscription for foreign funds.

— Meetings or road shows in Switzerland, calls, emails, etc.

Sources: [1] Towers Watson "Global Pensions Asset Study 2013"

Exhibit 4 – Country-by-Country Comparison: *Finland*

Overview

— Top 4 private and public sector pension funds manage approximately 72% of the Finnish pension fund market [1].

— Home to the largest number of direct allocators in the Nordic region with excellent in-house investment expertise compared to their European peers.

— There exists a strong bias towards well established, US-based managers in the absence of a domestic single manager market [2].

Requirements

— The Finish Financial Supervisory Authority has informally confirmed that their position is the same as pre-AIFMD (22 July 2013). Finland is, therefore, continuing to allow private placements for professional investors.

— Finland has an additional level of regulation regarding marketing that potentially requires an AIFM to obtain a license to conduct "marketing" in Finland.

Transitional Arrangements

— Transitional rules are expected to be in place until 22 July 2014.

Investor Initiated Inquiries

— The investor initiated inquiries approach is similar to that in other jurisdictions.

— Once AIFMD is implemented, it will operate in a similar manner to the current regime.

— It is very important to document all existing and future investor requests.

Sources: [1] Towers Watson, Pension Fund YE 2012. [2] Evaluation of the Finnish Pension System, 2013.

Exhibit 5 – Country-by-Country Comparison: *Denmark*

Overview

- The Danish investor base is entirely comprised of institutional allocators; however the appetite for hedge funds appears to be lower relative to that in Finland and Sweden.
- There are just a small handful of institutional investors actively allocating to hedge funds [1].

Requirements

- Denmark has fully implemented AIFMD, however no transition period has been adopted for hedge funds (only for closed end funds). This is likely because Denmark never had a private placement regime.
- Marketing in Denmark has always been dependent upon investor initiated inquiries.
- Denmark has now implemented the registration process under article 42 of AIFMD.
    - If a manager registers their fund, they will be able to market under the private placement regime for the first time ever in Denmark.

What is considered marketing?

- Simply naming a product to one or more investors may not constitute as marketing. It is likely that you will need to mention product specific information in order for your communication to constitute as marketing.
- There is no bright line rule of thumb for determining when a fund is marketing based simply on the number of investors. An AIFM would need to take caution when having conversations with multiple investors.
- Investor initiated inquiries have been tested over a long period of time in Denmark; the Danish investor base has given RFPs and hence used investor initiated inquires in the past.
- Managers must still ensure and be in a position to prove that investor initiated inquiries originated solely from the investor.

Sources: [1] Towers Watson, Pension Fund YE 2012.

Exhibit 6 – Country-by-Country Comparison: *Sweden*

Overview

- The four main national pension funds account for a combined $146 billion (as of 2012), and have adopted risk-based approach to asset allocation as opposed to a traditional asset allocation approach.
- The four main funds have fairly large allocations (~10%+) to hedge funds. Qualitative data suggests that Swedish institutional allocators are more flexible than their Finnish peers with regard to track record and AUM requirements, and show an opportunistic appetite to seed managers [1].
- Transitional arrangements are in place until 21 July 2014.

Transitional Arrangements

Key conditions for utilizing the transitional arrangements:

- An AIFM must have marketed an AIF into Sweden prior to 22 July 2013.
- If the first condition is satisfied, it would allow an AIFM to market both old and new funds to professional investors until 22 July 2014.

Investor Initiated Inquiries

- Swedish legislation is not very explicit on the exact text that should be followed with regards to investor initiated inquiries.
- Managers should first give very generic information to investors until further prompted by a specific request for fund information. This should be recorded as an audit trail.

What is considered marketing?

- Sweden is taking one of the widest approaches to marketing. For example, if you mention the name of a product to more than one investor, this may constitute as marketing.

Sources: [1] Towers Watson, Pension Fund YE 2012.

Exhibit 7 – Country-by-Country Comparison: *Germany*

Overview

— Germany is less active in terms of hedge fund investing, largely due to tax and regulatory capital requirements.

— Several German family offices have been warming to hedge funds over the last few years and there are also several private German pension funds who have allocated to hedge funds recently which may act as a bellwether for the rest of the German market over the next few years.

— Transitional arrangements are in place until 21 July 2014.

Transitional Arrangements

Key conditions for utilizing the transitional arrangements:

- — Only funds that have marketed in Germany prior to 22 July 2013 (through non-public distribution) can benefit from transitional provisions.
- — Funds launched after 22 July 2013 do not qualify.

— Before AIFMD, the market was divided between public and non-public distribution. Funds could use non-public distribution as an exemption from BaFin (German regulator) registration. Distribution to institutional clients of hedge funds was relatively easy under the non-public regime.

— After the transitional period, the existing private placement exemption in Germany will no longer be available. Going forward, AIFMs will need to register their AIFM with BaFin in order to be able to market into Germany.

Requirements

— AIFMs must register their AIF with the BaFin.

— If a manager gives investment advice or conducts any other MiFid related services (i.e. distribution activities, RTO services), then they will need a financial services license. For UK AIFMs, the MiFid license from the FCA can be passported into the EU.

— It is still unclear whether AIFM's authorized in a country other than Germany will be able to passport "ancillary services." For example, marketing, distribution and advisory.

Exhibit 7 – Country-by-Country Comparison: *Germany (Cont'd)*

Investor Initiated Inquiries

— Non-EU AIFMs may sometimes be able to rely on investor initiated inquiries, or alternatively, involve a distributor in Europe that already has a license.

— Investor initiated inquiries should not be used as a "strategy" for soliciting German investors because if a fund is not registered but found to be marketing, there can be a regulatory fine imposed on the AIFM and potential civil liability to the AIFM and the investor.

What is considered marketing?

— Germany is taking a wide approach to marketing. Nearly everything product-specific related may constitute marketing. Naming the AIF alone, however, may not constitute marketing.

— Registration of the AIF with the BaFin is not just a on-way notification, but requires an affirmative response from the BaFin. Registration requires the AIFM to comply with the transparency requirements of the Directive.

— Documents do not need to be translated into German for registration if marketing solely to professional and semi-professional investors.

— Response time of the regulator will depend on fund structure, but could be up to a year.

— For non-EU AIFMs, the process is more complicated as they are not registered within the EU. The BaFin requires that the non-EU AIF provide the regulator with essential information on the AIFM and depositary, but it is not yet clear what information they will require.

Exhibit 8: Form PF vs. Annex IV

Key Similarities	Form PF	Annex IV
Underlying Information	Form PF and Annex IV require similar underlying information as well as classification and enrichment of this information however Annex IV is considered to be more extensive than Form PF in terms of requirements.	
Infrastructure & Data Architecture	Similarities in information required will create similar reporting solutions whether in-house or via 3rd party.	
Definitions	Key definitions of inter-related terms can be found throughout both Form PM and Annex IV.	
Periodicity	Similar in terms of required deadlines (i.e. Annually, Semi-Annually, Quarterly depending on AUM)	

Key Differences	Form PF	Annex IV
Periodicity	-60 Day Reporting Deadline -AUM calculation = gross assets from the balance sheet	-30 Day Reporting Deadline -AUM calculation = grosses up derivatives taking the absolute value of the underlying exposures
Report Sections	-Driven by manager size and funds size or type	-Fund domicile (EU vs. non-EU) and leverage are key components
Overall Format	Although it is said that approximately 60% of the data required under Form PF can be replicated into the AIFMD's Annex IV report, this data will still need to be mapped and regrouped due to the varying format of the two templates.	
Assumptions & Explanations	Allows assumptions & explanations	Does not allow assumptions and explanations
Feeder Funds	Allowed to aggregate feeder funds up to their master for more streamlined reporting	Reported separately from their master fund entity
Calculations	-Annex IV includes a specifically designed calculation of leverage -Asset exposure calculations are also more specific in Annex IV while risk calculations are less detailed	
Risk Reporting	Depends on the size of your firm and the type of strategy	Entire template must be populated
Filing	File directly with the SEC via a single website	Captured by NCAs who will then deliver the XML reports to Esma

Exhibit 9: Annex IV Reporting Providers

Software Solutions	Advise Technologies	Kneip	Data Agent
Profile	License-based software solution	Annual report provider developing AIFMD software tool	Software solution
Website	www.advisetechnologies.com	www.kneip.com	www.dataagent.com
Sales Contact	Doug Schwenk Doug.schwenk@advisetechnologies.com +1 (646) 657-8406	Anke Kneifel Anke.kneifel@kneip.com +352 227 277 614	Steven Draper sdraper@dataagent.com +1 (415) 366-8002
Clients	124 Form PF clients	2 hedge funds using AIFMD solution	50 Form PF clients
Product Highlights	PF Enterprise features a N-tier client-server architecture supporting multiple, concurrent users, an enhanced audit trail, in-depth workflow and user permissioning, and a calculation engine.	For Annex IV, offer a Saas or Managed Service Solution for different levels of interaction.	Collaborative workflow, full audit trail, drill down into the underlying data, ability to adjust answers and make notes for each question on the direct interface.
Other regulatory reporting capabilities (e.g. PF, ADV)?	Form PF, CPO-PQR, CTA-PR	UCITS reporting, annual reports	PF, AIFMD
Key Differentiators	Desktop or web-based version. Partnership with several fund administrators.	European-based provider that can assist with marketing and cross-border distribution, annual report production/investor disclosures and produce Annex IV	Full reporting service to add value for the least cost. Front end very user friendly.
Pricing	Full module and all forms: $150k licensing fee + $7.5k per year Desktop only (additional forms can be purchased ad hoc): $7.5k		Implementation fee depends on number of data sources. Form PF for large client, cost was around $10-12k for implementation. Filing fee was about $15k/year or $12k/quarter.

Exhibit 9: Annex IV Reporting Providers

Software Solutions	SS&C GlobeOp	Investor Analytics	ConceptONE
Profile	Fund administrator with stand-alone regulatory reporting solution	Data aggregator and risk reporting service with Annex IV solution	Custom software development firm
Website	www.sscglobeop.com	www.investoranalytics.com	www.conceptonellc.com
Sales Contact	Michael Megaw mmegaw@sscinc.com +1 (212) 455 6333	David Fletcher David.fletcher@investoranalytics.com +44 (0) 7572 606 269	Cary Goldstein Cgoldstein@conceptonellc.com +1 (646) 840 4977
Clients	80+ regulatory reporting clients	Working with existing client base ($380B in daily assets under analysis)	55 regulatory reporting clients
Product Highlights	Proprietary technology (no third parties); documents all processes and methodologies, permissioning and security. Leverages existing data for fund admin clients; single database for multiple reg filings	Able to do VAR, stress test and other risk calculations; project management team with data gathering experience. Ability to do consulting, reporting and analytics.	Comes with suggested templates, multiple languages, XML protocol
Other regulatory reporting capabilities (e.g. PF, ADV)?	Single database for multiple regulatory filings in US and Europe. Also handles Open Protocol and FATCA.	Risk reporting	Calculation engines can use the same data to populate multiple types of regulatory/industry forms (Form PF, AIFMD, Open Protocol
Key Differentiators	Open dialogue with regulators through SS&C (submit queries on client's behalf)	Ability to complete risk calculations; already has feeds with 50+ data providers for data mapping	Data warehouse can be developed for central data depository
Pricing	$15-20K per filing		Dependent upon complexity, service levels and number of reporting funds. Range of $10-40K per filing. Implementation fee can be $10-30K.

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