

AIFMD Factsheet: Disclosure and Reporting Requirements

What is the AIFMD?

The Alternative Investment Fund Managers Directive (“**AIFMD**”) introduced a new passport system for the marketing of alternative investment funds (“**AIFs**”) in the European Union (“**EU**”) and created a legal framework operating at European level to monitor and supervise alternative investment fund managers (“**AIFMs**”) within a harmonised system for the first time. EU member states were required to transpose the AIFMD into national law by 22 July 2013.

Disclosure and Reporting Requirements under the AIFMD

The purpose of this note is to give an overview of the disclosure and reporting requirements under the AIFMD. The AIFMD makes provision for disclosure to investors, both prior to and after their initial investment. An AIFM is required to make the disclosures in respect of each EU-domiciled AIF managed by it and each EU or non-EU-domiciled AIF marketed by it in the EU. The AIFMD provides a detailed list of matters to be disclosed to investors, including but not limited to, a description of the investment strategy and objectives of the AIF. The disclosure and reporting requirements under the AIFMD can be split into three groups, being initial disclosures to investors, ongoing disclosures to investors and information required to be reported to regulators.

Non-EU AIFMs availing of national private placement rules to market AIFs in the EU must also comply with the disclosure and reporting requirements set out in the AIFMD in respect of each AIF marketed in the EU.

Initial Disclosures to Investors

Most of the information required to be disclosed to investors prior to investment under the AIFMD was required to be disclosed under pre-existing Irish requirements. These include disclosure of the type of investment vehicle, investment strategy, leverage, collateral, how changes in strategy may be implemented, service providers (AIFM, depositary, valuer, auditor, prime broker etc), valuation procedures, fees and expenses, provisions to ensure fair treatment of investors, subscription and redemption procedures and liquidity management procedures. Material changes to this information must also be disclosed to investors, and any change to depositary liability must be notified without delay.

The AIFMD requires additional information to be disclosed to investors prior to their initial investment, including in particular:

- a description of how the AIFM is complying with the requirement that it have additional funds to cover the potential liability risks arising from professional negligence or to hold professional indemnity insurance against liability arising from professional negligence;
- the latest net asset value of the AIF or the latest market price of the unit or share of the AIF; and
- the historical performance of the AIF.

AIFMs should consider whether the items above should be included in an AIF’s prospectus and disclosed to potential investors in this way or separately. In practice, this information will change over time so the most likely approach will be to issue an investor fact sheet or to rely on internet based dissemination of the information. In addition, the AIFM will need to consider how to document and record the provision of this information to potential investors.

Ongoing Disclosure Requirements

The AIFM must disclose periodically the percentage of the AIF’s assets which are subject to special arrangements arising from their illiquid nature (eg, side pocket arrangements), any new liquidity management arrangements, the current risk profile of the AIF and the risk management systems employed to manage those risks. If the AIFM manages an EU-domiciled AIF, or markets an AIF in the EU which employs leverage, it must on a regular basis disclose any change to the maximum level of leverage permitted as well as any re-hypothecation rights or any guarantee granted under the leveraging arrangement and the total amount of leverage employed by the AIF.

Information Required to be Provided to Regulators

The AIFMD requires detailed reporting to the competent authorities, including information in relation to principal markets on which an AIFM trades, instruments traded, principal exposures, important concentrations, illiquid assets, special arrangements, risk profiles, risk management systems, stress testing results, a list of all AIFs managed, leverage in the AIFs and sources of leverage. The AIFM will also have to respond to any additional regulatory requests issued from time to time.

Level 2 Measures on Disclosure

Implementing measures under the AIFMD elaborate on the disclosure and reporting requirements in the AIFMD (the “**Level 2 Regulation**”). The Level 2 Regulation outlines some minimum requirements for the content of the annual report, reflecting recognised practices, accounting standards and rules. It also stipulates the content and format of the disclosure of the information to investors and establishes the content, format and frequency of information to be provided to the competent authorities. The reporting frequency is dependent on the amount of assets managed by the AIFM. AIFMs that manage assets exceeding the threshold of €100 million (leveraged) or €500 million (unleveraged) but less than €1 billion must report semi-annually, while AIFMs with more than €1 billion under management must report on a quarterly basis. Where an AIFM having total assets under management exceeding the AIFMD thresholds but less than €1 billion manages individual AIFs with assets under management exceeding €500 million, reporting in respect of those AIFs must be on a quarterly basis.

The Level 2 Regulation also provides that an AIF will be considered to employ leverage on a substantial basis when its exposure, calculated using the “commitment method”, exceeds three times its net asset value (“**NAV**”).

Further Guidance

The European Securities and Markets Authority (“**ESMA**”) has issued Guidelines on reporting obligations under the AIFMD (the “**Guidelines**”). The Guidelines are intended to provide clarifications on the information that AIFMs must report to national competent authorities, the timing of such reporting and the procedures to be followed when AIFMs move from one reporting obligation to another. ESMA has also issued a questions and answers document on the application of the AIFMD which provides further detail on the AIFMD requirements including the reporting and disclosure provisions and which is updated as new questions arise.

Summary

Much of the information which the AIFMD requires to be disclosed to investors may already have been contained in an AIF’s prospectus or in regular reports circulated to investors prior to the introduction of the AIFMD. As outlined above, however, the AIFMD introduced increased disclosure requirements in certain areas, particularly in relation to liquidity management and leverage disclosures, requiring AIFMs to review the initial disclosure documents (eg, prospectus and marketing materials) and ongoing reporting to investors in respect of AIFs to ensure compliance with these requirements. It is also important for the AIFM to consider the manner in which it documents and records the provision of the above information to potential investors.

Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team can be accessed at www.matheson.com.

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