

Link n' Learn

European regulatory update



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Agenda

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Reporting - Update on ESMA Q&A dated 30 September

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Remuneration

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UCITS V

AIFMD reporting (annex IV)

ESMA Q&A update

Setting the scene

ESMA issued an updated Q&A on 30 September

This applies not only to EU AIFM but also to:

- Non-EU AIFM managing EU AIF
- Non-EU AIFM managing non-EU AIF distributed in EU



Disclosures to investors (art. 23)

AIFM and AIFs under management

Reporting to authorities (art. 22 & 24)

Others (art. 27 to 30)

Information to be made available to the investors, via prospectus and other durable means, such as web-site:

- Content of prospectus – art. 23 (1), (2)
- Liquidity management – art. 23 (4)
- Risk Management system - art. 23(4)
- Leverage - art. 23(5)

Annual report (art. 22) :

Similar to UCITS

Additional information:

- Any material changes
- Remuneration for the financial year
- Information on AIFs exercising control of non-listed companies

Details of acquisition of non-listed companies - additional information to employees of companies held by PE and VC funds

"Annex IV" reporting (art. 24)

- Consolidated information at AIFM level, e.g. most important markets and instruments, detailed list of all AIFs which the AIFM manages
- Consolidated information at AIF level from various sources (e.g. AIFM, FA, TA, Risk, custody) – figures and narratives (i.e. results of stress tests)

- Disclosures to investors are required :
 - before the investment,
 - when significant changes are implemented (e.g. change in liquidity management) and
 - on a regular basis
- Some changes may trigger the reporting production (e.g. changes to level of AuM, leverage, risk, thresholds in terms of significant holding)

Focus of today's presentation

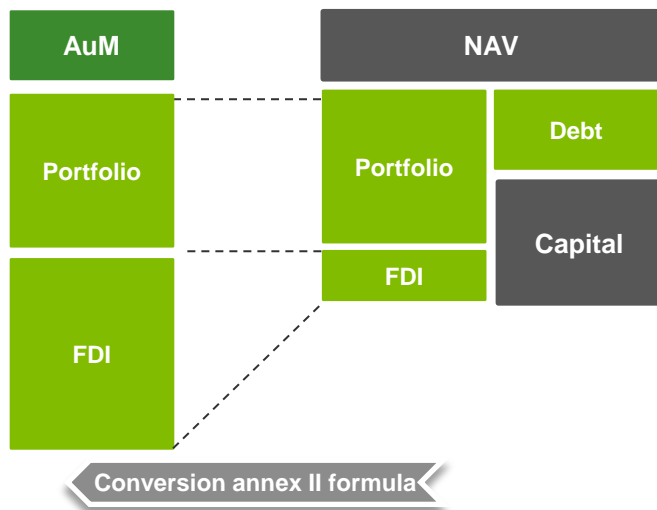
AIMFD reporting ESMA Q&A update

AUM vs NAV

AUM (Asset Under Management) vs NAV (Net Asset Value) (Q&A 38, 39, 41)

Numerous fields in Annex IV refer to AUM, ESMA clarified that AUM calculated as per art. 2 of the implementing Regulation should be used and not the NAV

AUM should be calculated the absolute value of all assets it manages, without deducting liabilities, and valuing financial derivative instruments (FDIs) at the value of an equivalent position in the underlying assets.



AUM might be significantly different from NAV

AIMFD reporting ESMA Q&A update

AUM vs NAV

Illustration:

	Net Asset Value	Asset under Management	Comments
Long Portfolio	100.000.000	100.000.000	
Derivatives	500.000	8.000.000	Conversion of derivatives with annex II formula
FX (hedging)	(180.000)	2.000.000	Conversion of derivatives with annex II formula
Cash	2.000.000	2.000.000	
Debt	(40.000.000)		Liabilities are not deducted
Total	62.320.000	112.000.000	

ESMA specifically clarified that AUM and not the NAV should be used when reporting the following fields :

Main instruments in which the AIF is trading

	64	65	66	67	68	69 to 74	75	76	77
	Ranking	Sub-asset type code of the instrument	Instrument code type	Instrument name	Instrument ISIN code	Instrument All code - Exchange Code - Exchange Product Code - Derivative type - Put/Call Identifier - Expiry Date - Strike Price	Position type (Long/Short)	Instrument position value (as calculated under Article 3 AIFMD)	Hedging % for short position *
Most important instrument	1	DER_FEX_HEDG	NONE	NAME			Long	€€€	
2 nd most important instrument	2	SEC_CBN_NIVG	NONE	NAME			Long	€€€	
3 rd most important instrument	3	DER_FEX_HEDG	NONE	NAME			Long	€€€	
4 th most important instrument	4	DER_FEX_HEDG	NONE	NAME			Long	€€€	
5 th most important instrument	5	CIU_NAM_OTHR	NONE	NAME			Long	€€€	

AIMFD reporting ESMA Q&A update

AUM vs NAV

Ten principal exposures

Ten principal exposures of the AIF at the reporting date (most valuable in absolute terms):									
	94	95	96	97	98	99	100	101	102
	Ranking	Macro asset type	Sub-asset type	Position type (Long/Short)	Aggregated value	Aggregated value percentage	Counterparty Name	Counterparty LEI code	Counterparty BIC code
1 st	1	DER	DER_FEX_HE DG	Long	€€€	89,56	XXX		
2 nd	2	SEC	SEC_CBN_NI VG	Long	€€€	7,49			
3 rd	3	CIU	CIU_NAM_O THR	Long	€€€	1,44	YYYY		
4 th	4	SEC	SEC_CSH_OT HC	Long	€€€	1,43			
5 th	5	SEC	SEC_CSH_OT HC	Short	€€€	0,08			

Five most important concentrations

Five most important portfolio concentrations:										
	103	104	105	106	107	108	109	110	111	112
	Ranking	Asset type	Position type (Long/Short)	Market code type	Market code	Aggregated value	Aggregated value percentage	Counterparty Name	Counterparty LEI code	Counterparty BIC code
1 st	1	DER_FEX	Long	OTC		€€€	89,56			
2 nd	2	SEC_CBN	Long	XXX		€€€	7,49			
3 rd	3	CIU_NAM	Long	XXX		€€€	1,44			
4 th	4	SEC_CSH	Long	XXX		€€€	1,43			
5 th	5	SEC_CSH	Short	XXX		€€€	0,08			

AUM should be used and not NAV when reporting in Annex IV (unless specifically stated)

AIMFD reporting ESMA Q&A update

Reporting frequency for non-EU AIFM

Non-EU AIFM should calculate a unique frequency (Q&A37)

Non-EU AIFM marketing its AIF's in several member states under the national placement regime should calculate a unique reporting frequency based on all EU AIF's and all AIFs marketed in the EU

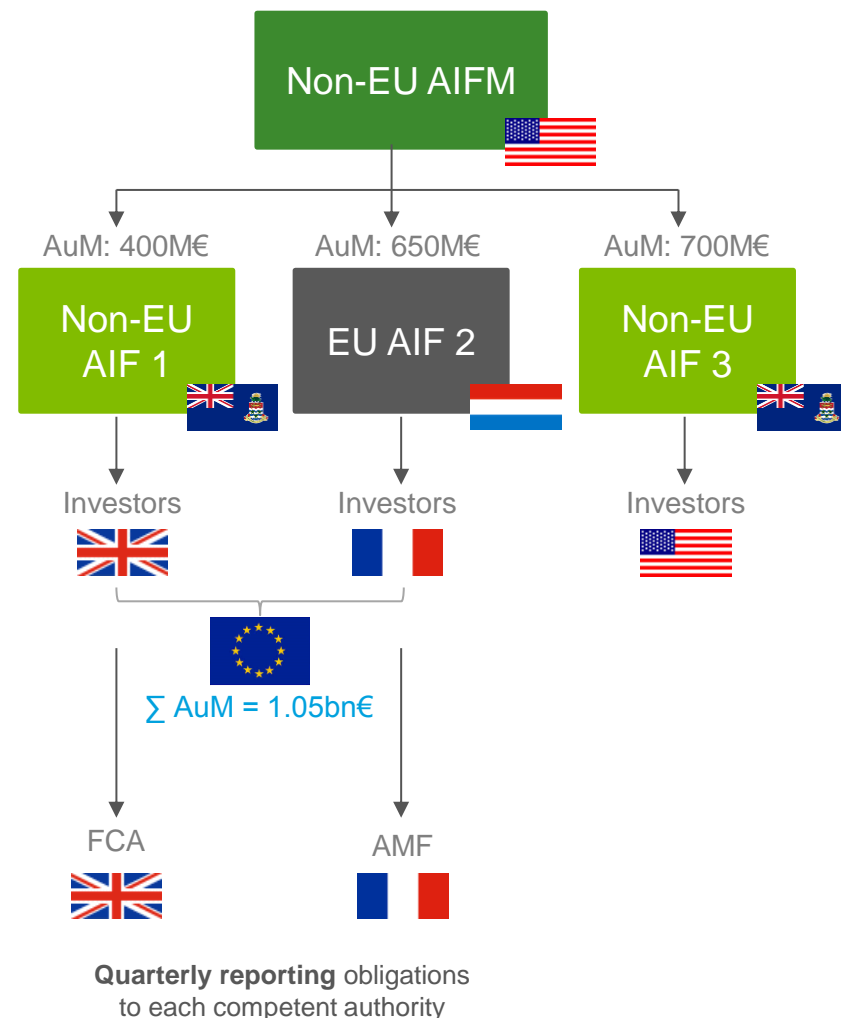
Illustration:

The AUM figures to be used in this case are

$$\begin{aligned} & \text{Non-EU AIF 1} + \text{EU AIF 2} \\ & 400\text{M€} + 650\text{M€} = 1.05\text{bn€} \end{aligned}$$

Therefore, the AIFM will reach AUM above one billion EUR, hence will have **quarterly reporting** obligations towards both the UK and French competent authorities for the relevant AIF:

- Non-EU AIF 1 in the UK
- EU AIF 2 in France



AIMFD reporting ESMA Q&A update (4/4)

Use of estimates of the NAV

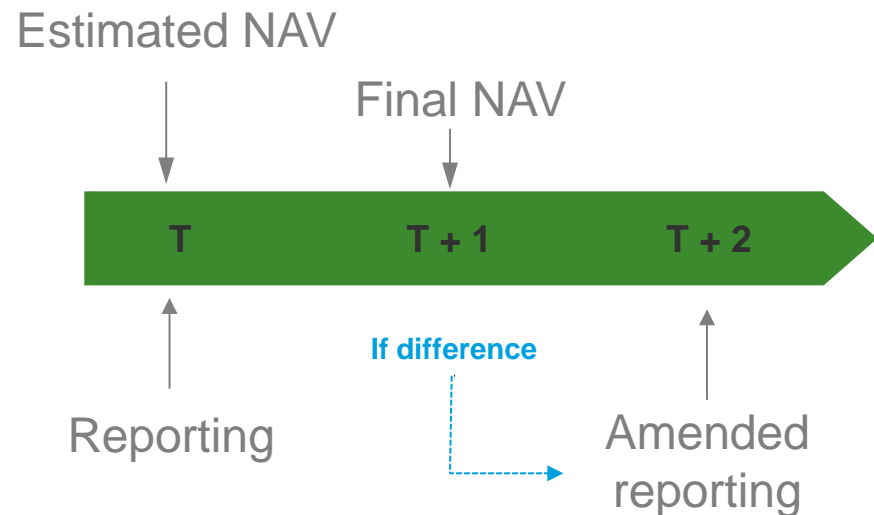
When final NAV is not available AIFM should use estimates of NAV (Q&A 40)

If the final NAV is not available within 30 days (or 45 days for fund of fund) or no longer representative:

- AIFM should use estimates of NAV.

If there is a difference between the estimated NAV and final NAV:

- AIFM should send updated report afterwards



ESMA does not clarify if materiality threshold could be applied on difference between estimated NAV and final NAV, nor when the updated annex IV report should be submitted

AIMFD reporting ESMA Q&A update

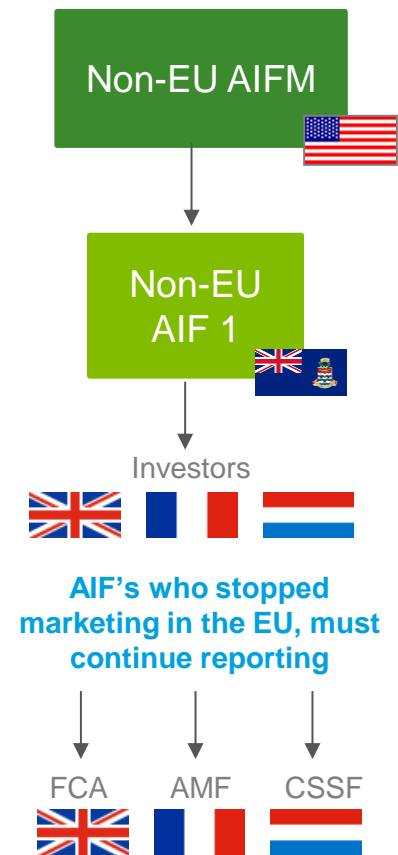
Reporting when marketing period ended

Reporting requirements are based on investors and not marketing period (Q&A 36)

For non-EU AIFMs marketing AIFs under national placement regime should, reporting obligations to national competent authorities are:

- Not based on the actual marketing period
- Based on **existence of investors** in the AIF in the jurisdiction of the authority concerned.

As illustrated, with investors in UK, France and Luxembourg, the Non-EU AIFM must continue to report towards all three national competent authorities.



Therefore, non-EU AIFMs should continue to report to national competent authorities after the marketing period has ended unless they confirm that no investors in the jurisdiction of the authority concerned are invested in the AIFs.

Remuneration

Hot topics in asset management remuneration



Hot topics in asset management remuneration

AIFMD/UCITS V - Identifying Staff

AIFMs and UCITS management companies will need to identify their material risk takers (“Identified Staff”) for the purposes of the remuneration rules.

Qualitative measures

Individual may not be Code Staff if it can be demonstrated that they do not have a material impact on the firm’s risk profile

1. Board members (EDs and NEDs)

2. Senior management

3. Head of Risk, Compliance, Internal Audit

4. Responsibility for portfolio management, admin, marketing, HR

5. Other risk takers

6. Employees with total remuneration in same bracket as other Identified Staff

Quantitative measures

None

Hot topics in asset management remuneration

CRD IV - Code Staff identification

The European Banking Authority has released new regulatory technical standards on the definition of 'Identified Staff' under CRD IV which took effect in June 2014. This may lead to a significant increase in the number of Identified Staff for impacted firms.

Qualitative measures

Individual is automatic Code Staff

1. Board members (EDs and NEDs)	2. Senior management
3. Head of Risk, Compliance, Internal Audit	4. Responsibility for risk management within material business unit
5. Head of material business unit	6. Direct reports to (3), (4) and (5)
7. Head of relevant functions (HR, Legal, Finance, Tax, Budgeting, Remuneration, IT, Economic Analysis)	
8. Individuals responsible for risk categories (Articles 79-87)*	9. Individuals with authority to initiate, approve or veto material credit risk exposures*
10. individuals with authority to take, approve or veto material decisions on trading book*	11. Individuals with managerial responsibility for staff under (9) and (10)
12. Individuals with authority to approve/veto decisions on introduction of new products	13. Individuals with managerial responsibility for any of the above individuals

* Includes committee members

Quantitative measures

Individual may not be Code Staff if it can be demonstrated that they do not have a material impact on the firm's risk profile

1. Individuals with total remuneration of at least €500,000 in the previous financial year
2. Individuals in the top 0.3% of employees for highest total remuneration in the previous financial year
3. Individuals with total remuneration in previous financial year in excess of certain other Identified Staff (primarily excluding non-executive, support function and control function roles).

Individuals with no material impact on firm's risk profile

This would be the case only if the individual has responsibilities within a non-material business unit, or if their activities have no material impact on the risk profile of a material business unit.

Firms will need to notify their regulator of this if total remuneration in the prior year was below €750,000 and seek prior approval if total remuneration was above €750,000.

The EBA must be notified if approvals are granted for individuals earning more than €1m.

Hot topics in asset management remuneration

AIFMD remuneration disclosures – disclosure of information

•Under the AIFMD requirements, certain details of the remuneration paid to staff at the AIFM must be disclosed in the annual report of the AIF

•This means that an AIFM which manages multiple AIFs may need to make remuneration disclosures in multiple annual reports

•The AIF's annual report does not necessarily need to be publically disclosed, but must be made available to investors no later than 6 months after the end of the financial year of the AIF

•The annual report must also be made available to the national regulator of both the AIFM's home member state and the AIF's home member state

•The remuneration disclosures are in respect of the AIF's financial year, rather than remuneration paid in the AIFM's performance/financial year – these year ends may not necessarily match. This makes it a potentially complex exercise for firms who have a number of AIFs with different year ends

Hot topics in asset management remuneration

AIFMD remuneration disclosures

Qualitative disclosures:

- AIFMD requires the disclosure of general information about the AIFM's remuneration policy and practices and link between pay and performance:
- *“AIFMs shall provide general information relating to the financial and non-financial criteria of the remuneration policies and practices for relevant categories of staff to enable investors to assess the incentives created... AIFMs shall disclose at least the information necessary to provide an understanding of the risk profile of the AIF and the measures it adopts to avoid or manage conflicts of interest.”* (EU Regulation no 231/2013, Article 107(4))
- It is suggested that the information necessary to provide an understanding of the risk profile of the AIF should include:
- *“the number of AIFs and UCITS funds managed by the AIFM and the total assets under management of such AIFs and UCITS with an overview of the remuneration policy and a reference to where the full remuneration policy of the AIFM is available at the request of investors.”* (EU Regulation no 231/2013, paragraph 127)

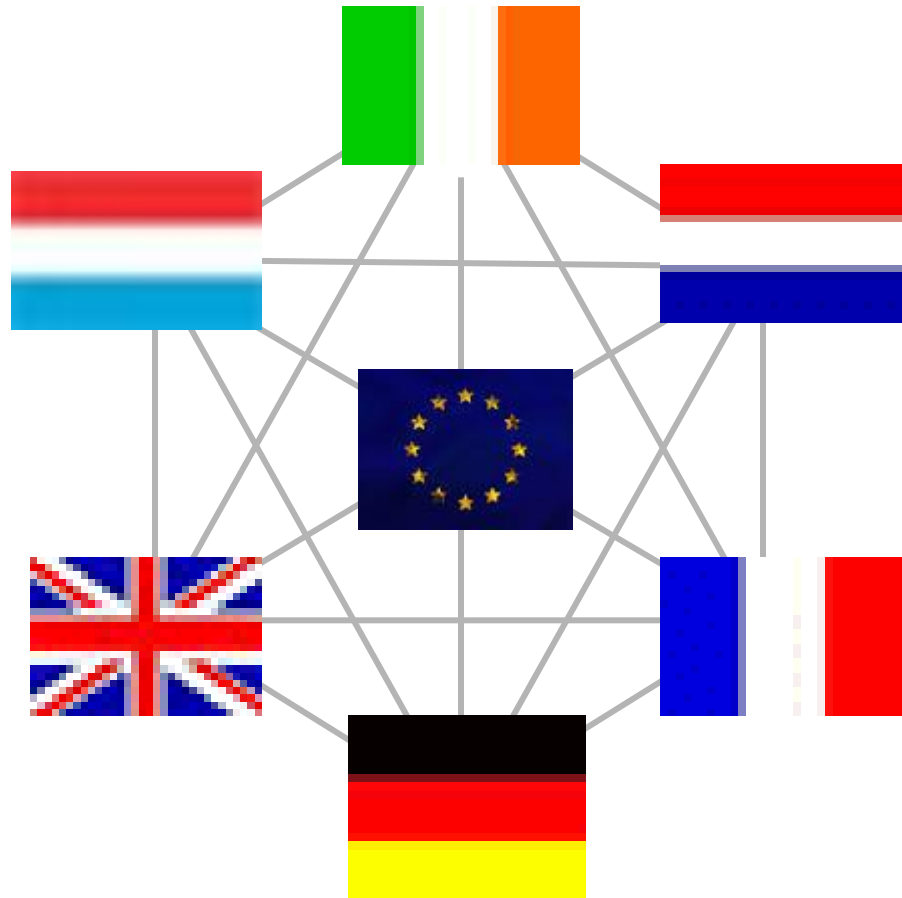
information to
be disclosed

Quantitative disclosures:

- AIFMD requires the disclosure of the aggregate remuneration paid to all staff of the AIFM and the aggregate remuneration paid to the Identified Staff of the AIFM (broken down between senior management and other Identified Staff)*
- *e. the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;*
- *f. the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.* (AIFMD Article 22, paragraph 2)
- The Level 2 text provides three alternatives for how firms can disclose the aggregate remuneration for all staff in line with requirement (e) above

Hot topics in asset management remuneration

Country trends



Marketing










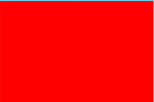








AIFMD Marketing/NPPR – Update

Questions of strategy

- I am a non-EU Alternative Investment Fund Manager
 - What are the different NPPR regimes across Europe? – [see example table below](#)
 - Does it make sense to “limit” marketing to, for example, UK, Ireland, Luxembourg, Belgium, the Netherlands and Sweden?
 - How much will it cost me to comply with the different NPPR regimes?
 - For the sake of simplicity should I set up in Europe and become a full scope EU AIFM?
 - Can I persuade my fund managers to be subject to the AIFMD remuneration obligations in exchange for a marketing passport?
 - What are the chances of ESMA introducing a passport regime for non-EU AIFMs from Q4 2015?















Alternative Investment Fund Managers Directive

Marketing by non-EU AIFMs/AIFs – country overview

	Country	AIFMD implemented?	Is marketing without an EU passport provided for?*	Gold plating to AIFMD?	Compliance level	Notes
	Austria	✓	✓	Y		Additional requirements amounting to full compliance with AIFMD and the appointment of a local representative in Austria
	Belgium	✓	✓	?		Minimum AIFMD requirements as per Article 42 and additional confirmations requested as part of the application
	Denmark	✓	✓	Y		Appointment of a depositary required. Additional documentation and confirmations requested as part of the application
	Finland	✓	✓	Y		Appointment of a depositary required plus compliance with OECD Model Tax Agreement; Additional documentation and confirmations requested as part of the application
	France	✓	✓	Y		The AIFM must comply with the provisions pertaining to AIFs and the French laws and regulations applicable to portfolio management companies. Appointment of a depositary required
	Germany	✓	✓	Y		Appointment of a depositary required. Additional information, documentation and confirmations requested as part of the application
	Greece	✓	✗	N/A		Private placement is not permitted in Greece and this is not expected to change with the implementation of AIFMD. A priori AIFMD Article 42 is not part of the Greek implementation law
	Ireland	✓	✓	N		The AIFMD's provisions on non-EU marketing to professional investors have been transposed without gold plating but the Central Bank may decide to impose further conditions. A limitation to 20 investors has historically applied for private placement
	Italy	✓	✗	N/A		Implementation expected. Private placement is not permitted in Italy and this is not expected to change with the implementation of AIFMD. A priori AIFMD Article 42 is not part of the Italian implementation law

Alternative Investment Fund Managers Directive






Marketing by non-EU AIFMs/AIFs – country overview

Country	AIFMD implemented ?	Is marketing without an EU passport provided for?*	Gold plating to AIFMD?	Compliance level	Notes
 Luxembourg	✓	✓	N		currently no additional requirements in addition to minimum AIFMD requirements as per Article 42
 Netherlands	✓	✓	N		No additional requirements currently specified
 Norway	✓	Unknown	Unknown		Not a member of the EU but a member of the European Economic Area (EEA) that will be required to transpose AIFMD. Late implementation. Position unclear
 Portugal	✗	Unknown	Unknown		Late implementation. Position unclear
 Spain	✗	✗	N/A		Late implementation. Spain has historically only allowed private placement for closed-ended funds and the draft AIFMD implementing law would close this option also
 Sweden	✓	✓	N		No requirements above the minimum prescribed by AIFMD. Application must include business plan and other documentation
 Switzerland	N/A	N/A	N/A		Not a member of the EU and not obliged to transpose AIFMD. New distribution rules and investor classifications were implemented in 2013 with transitional arrangements applying until 2015. Private placement to regulated “qualified investors” (financial institutions) is permitted. HNWs and pension funds must opt in to be treated as “qualified investors”. Distribution to certain qualified investors will require the appointment of a Swiss representative and a Swiss paying agent
 United Kingdom	✓	✓	N		No requirements above the minimum prescribed by AIFMD

*Marketing without an EU passport refers to the option open to EU member states under Article 42 of AIFM to permit non-EU AIFMs to market non-EU AIFs in their jurisdiction, subject to certain minimum requirements.

While many member states will permit marketing without an EU passport, each member state needs to be assessed on a case-by-case basis in relation to:

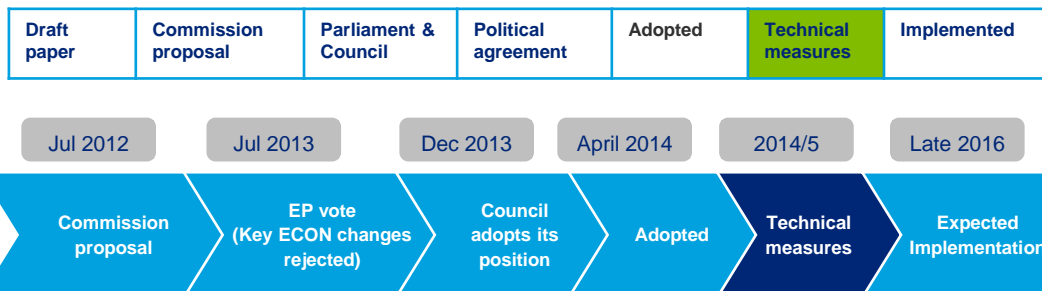
1) transitional arrangements, 2) permitted “pre-marketing” activities, 3) types of structures for which private placement is permitted and 4) whether the required cooperation arrangements are in place.

Compliance level	
	At EU norm
	Medium
	High
	Uncertainty
	= not possible for non-EU AIFMs to market

UCITS V

UCITS V

A quick glance



Overview

The financial crisis highlighted divergent depositary regimes across the EU and also focused regulators on remuneration and behaviour in the financial sector.

UCITS V has three key aims:

- 1 Harmonise UCITS depositary regime clarifying duties and liability
- 2 Harmonise remuneration rules with other sectors
- 3 Harmonise sanctions regime for UCITS breaches

UCITS V was approved by the European Parliament on 15 April 2014 and by the EU Council on 23 July 2014. For the most part, UCITS V is aligned with AIFMD on remuneration and depositary requirements and additionally lays down a new framework on the application of sanctions for breaches of UCITS rules. EU Parliament has approved UCITS V in September 2014. Member states have an 18 month implementation timeframe, meaning that the UCITS V framework would need to be in place in early 2016. In September 2014, ESMA published a consultation on the technical advice to the European Commission under UCITS V.

Key elements

Depositary

- The depositary framework is aligned with AIFMD, clarifying new safekeeping (including strict liability), oversight and cash monitoring duties.
- Unlike AIFMD, the depositary will not be permitted to contractually discharge liability.

Remuneration

- The rules on remuneration also reflect those of AIFMD.
- The rules include the establishment of a remuneration policy to promote sound and effective risk management.
- Rules on payment of 50% of bonus out of units of the fund, bonus deferral over at least 3 years and clawback and malus provisions apply.

Sanctions

- UCITS V proposes a minimum catalogue of administrative sanctions and a minimum list of sanctioning criteria.
- Public reprimands are a feature of the proposed regime.

Focus on Investors protection

UCITS V

Depository regime

A depository must be:

- A national central bank.
- A credit institution authorised in accordance with the CRD IV Directive (2013/36/EU).
- Another authorised legal entity, which is subject to capital adequacy requirements, not less than the requirements calculated depending on the selected approach under Article 315 or 317 of the Capital Requirements Regulation (Regulation 575/2013) (CRR). In addition, such an entity must not have own funds less than the amount of initial capital under Article 28(2) of the CRD IV Directive and must meet specified minimum requirements (Article 23).

Duties and Liabilities of Depositories

- Operational Oversight - which includes ; Sales , issue , redemptions etc of units of the UCITS and its valuation s are carried out in accordance with applicable laws and instruments of incorporation.
- Monitoring of Cash Flows - This means ensuring that all payments made by or on behalf of investors when subscribing for units in the UCITS have been received, and that all cash of the UCITS has been booked in cash accounts.
- Safe Keeping – which includes; Providing comprehensive inventory of all of the UCITS's assets to the manco/investment co. on a regular basis and UCITS assets should not be reused by the depository itself or any other third party.

A depository is liable to the UCITS (and its unit holders)for loss by a depository or delegate of financial instruments held in custody unless its can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.
A depository should return a financial instrument of identical type or the corresponding amount without undue delay.

Delegation of Duties

Only Safe Keeping Function keeping can be delegated if

- The tasks are not delegated with the intention of avoiding the requirements of the UCITS IV Directive.
- The depository can demonstrate that there is an objective reason for the delegation.
- The depository has exercised all due skill, care and diligence in the selection and the appointment of a third party, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party and of the arrangements of the third party.

Summary of key points

- Harmonising the eligible entities which can act as depositories
- Clearly defining the responsibilities of a depositories which mainly include
 - Operational Oversight
 - Monitoring of Cash Flows – New Requirement
 - Safe Keeping – distinguishing between Financial instruments and other assets
- Delegation of Depositories duties
 - **X** - Operation Oversight and Cash Flow Monitoring
 - **√** - Safe Keeping subject to certain conditions.
- Depositories liability for investors' better protection

DEPOSITORY REGIME – ESMA CONSULTATION

The European Securities and Markets Authority (ESMA) has issued a [consultation paper](#) on draft technical advice to the European Commission under the revised Undertakings for Collective Investments in Transferable Securities (UCITS) Directive (UCITS V). ESMA is consulting on draft implementing measures regarding the depository role of UCITS funds.

In order to enhance the protection of investors' assets, UCITS V upgrades the duties and liabilities of UCITS' depositaries by clarifying the safekeeping, oversight and cash flow monitoring functions. The new rules prescribe the types of entity that may act as a depository. ESMA's consultation seeks stakeholders' views on proposals in two areas related to the depository function which are as follows:

Insolvency Protection

In order to ensure against the event of insolvency of a third party, UCITS V requires this third party to take all necessary steps to ensure that, in the event of its insolvency, the assets that it holds in custody are unavailable for insolvency distribution.

ESMA's proposals include steps to be taken by the third party including, but not limited to, the following:

- verify that the applicable legal system recognises the segregation of the UCITS' assets from those of the third party (which is not located in the EU) and that of the depository;
- recognise that the UCITS' segregated assets do not form part of the third party's estate in case of insolvency and are unavailable for distribution among or realisation for the benefit of creditors of the third party (if the latter is not located in the EU);
- always maintain accurate and up-to-date records and accounts of UCITS' assets that readily establish the precise nature, amount, location and ownership status of those assets;
- maintain appropriate arrangements to safeguard the UCITS' rights in its assets and minimise the risk of loss and misuse.

Independence Requirements

UCITS V provides that both the UCITS' Manco. (or the investment company, i.e. a self-managed UCITS) and its depository need to act independently and solely in the interest of the fund and its investors. In order to fulfil the independence requirement, ESMA proposes few measures which includes that no member of the management body of the manco./investment company shall be a member/employee of the management body of the depository and vice-versa; Two options are proposed for consultation. It is foreseen that

EITHER

the management company/investment company shall not have a direct or indirect holding in the depository or vice-versa;
the management company/investment company and the depository shall not be included in the same group for the purposes of consolidated accounts;

OR

in case (i) the management company/investment company has a direct or indirect holding in the depository or vice-versa or (ii) the management company/investment company and the depository are included in the same group for the purposes of consolidated accounts, the choice of the depository shall be justified to investors upon request;
in case the management company/investment company and the depository are included in the same group for the purposes of consolidated accounts, at least [one third] of the members of the management bodies of these entities shall be independent, in the sense that they shall not be members of the management body or the body in charge of the supervisory function nor employees of any of the undertakings within the group.

UCITS V

Remuneration regime

Remuneration policies and practices apply to those categories of staff whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS they manage. This includes:

- Senior management.
- Risk takers.
- Control functions.
- Employees receiving total remuneration that falls within the remuneration bracket of senior management and risk takers.

A remuneration policy must cover fixed and variable components of salaries and discretionary pension benefits. In a proportionate manner, a remuneration policy should:

- Be consistent with and promote sound and effective risk management that does not encourage risk-taking that is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS under management.
- Be in line with the business strategy, objectives, values and interests of the management company, its UCITS, and investors. This includes measures to avoid conflicts of interest.

Document	Details to disclose
UCITS prospectus	<ul style="list-style-type: none"> • Details of the remuneration policy, including a description of how remuneration and benefits are calculated, and the identities of persons responsible for awarding the remuneration and benefits. • A statement that the details of the remuneration policy are available by means of a website and that a paper copy will be made freely available if requested.
Annual report	<ul style="list-style-type: none"> • The total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff, the number of beneficiaries, and any amount paid directly by the UCITS itself, including performance fee. • The aggregate amount of remuneration broken down by categories of employee. • A description of how the remuneration and benefits have been calculated. • Outcomes of remuneration reviews, including any irregularities that have occurred. • Material changes to the adopted remuneration policy.
KIID	<ul style="list-style-type: none"> • A statement that the details of the remuneration policy are available by means of a website and that a paper copy will be made freely available if requested.

Summary of key points

- Almost duplicate the remuneration rules under AIFMD regulations
- Remuneration rules applied to staff whose professional activities have a **Material** impact on the risk profile of UCITS management company or of the UCITS under management
- Remuneration rules applied to Delegate of the managers!
- Key reason for remuneration policies
 - Transparency
 - Discourage risk taking which is inconsistent with the risk profile of UCITS
- Policies needs to be disclosed in UCITS prospectus. Annual report and KIID.

UCITS V

Sanction regime

- Administrative sanctions include a public statement which identifies the person responsible and the nature of the breach as well as temporary suspension or, permanent bans for repeated and serious breaches
- National regulators may decide on a case-by-case basis not to publish the identity of persons involved where they consider that this would be disproportionate
- All publicly disclosed sanctions should be simultaneously reported to ESMA, which should also publish an annual report on all sanctions imposed
- Member states should be able to decide not to lay down rules for administrative sanctions for breaches which are subject to national criminal law
- Secure communication channels should be established to enable anonymous reporting of breaches
- Maximum administrative pecuniary sanctions of at least EUR 5,000,000 or 10% of annual turnover for legal persons or EUR 5,000,000 for individuals
- Member states must notify the Commission of the measures they have taken to apply the common rules on sanctions and the Commission will conduct a review 3 years after entry into force of UCITS V

Access to telephone and data records

UCITS V amends UCITS IV to ensure that competent authorities are able to require existing telephone and existing data traffic records held by a telecommunication operator or by a UCITS, a management company, an investment company or a depository, where a reasonable suspicion exists that such records related to the subject-matter of the inspection may be relevant to prove a breach of UCITS IV (Article 98(2)).

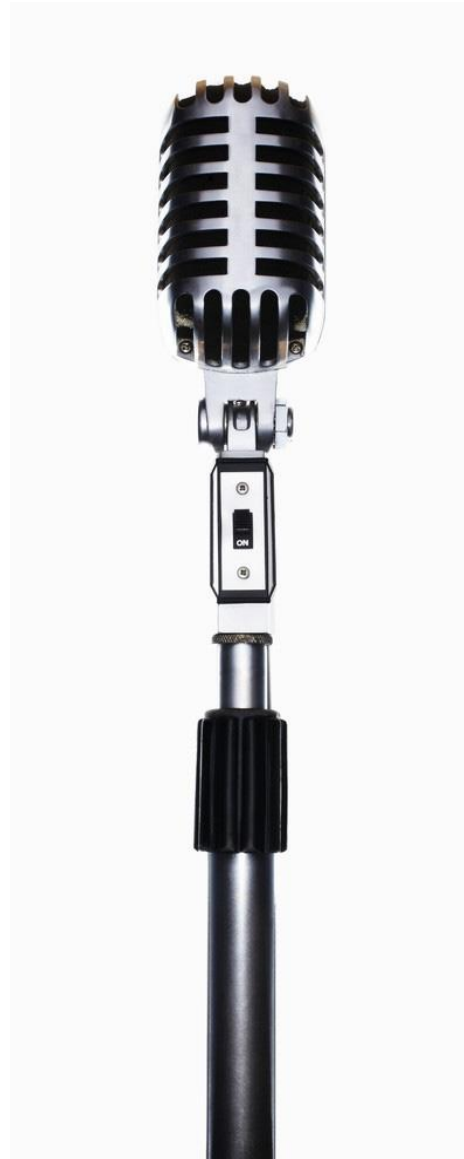
UCITS V aims to achieve minimum harmonisation of UCITS sanctioning regimes by requiring:

- A minimum catalogue of administrative sanctions and measures (including harmonisation of the lower bound of the maximum amounts of administrative fines).
- A minimum list of sanctioning criteria.
- Competent authorities and UCITS managers to establish whistle-blowing mechanisms.

Summary of key points

- All publicly disclosed sanctions should be reported to ESMA and ESMA should publish those in an annual report
- National regulators may decide not to publish the identity on case by case basis
- Access to telephone and Data records – **New Requirement**

Q&A





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