

## Link'n Learn: AIFMD Distribution

August 2016 Update

# Speakers

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## **Paola Liskka-Draper**

Senior Manager | Advisory & Consulting  
Deloitte Luxembourg  
T: +352 45145 2803  
E: [pliskkadramer@deloitte.lu](mailto:pliskkadramer@deloitte.lu)



## **Derina Bannon**

Manager | Legal and Regulatory  
Deloitte Ireland  
T: +353 1 417 2637  
E: [dbannon@deloitte.ie](mailto:dbannon@deloitte.ie)

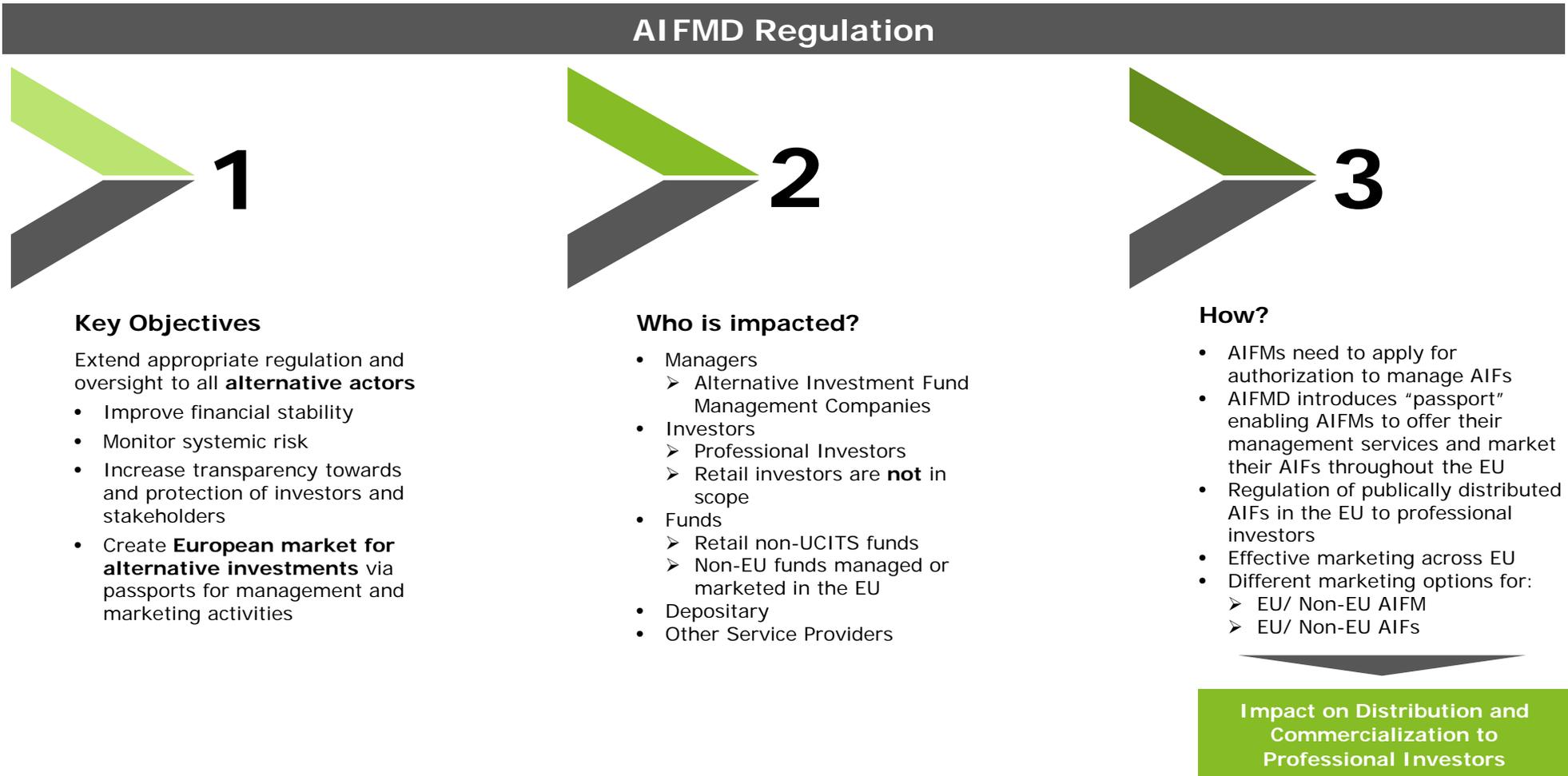


## **Miles Bennett**

Associate Director | Risk Advisory  
Deloitte UK  
T: +44 20 7303 7137  
E: [milbennett@deloitte.co.uk](mailto:milbennett@deloitte.co.uk)

# AIFMD: Key Piece of Regulation Within the European Landscape

- The Alternative Investment Fund Managers Directive (AIFMD) is an important piece of EU-wide regulation governing many aspects of the organization, supervision, responsibilities and delegation possibilities relating to Alternative Funds (AIFs).



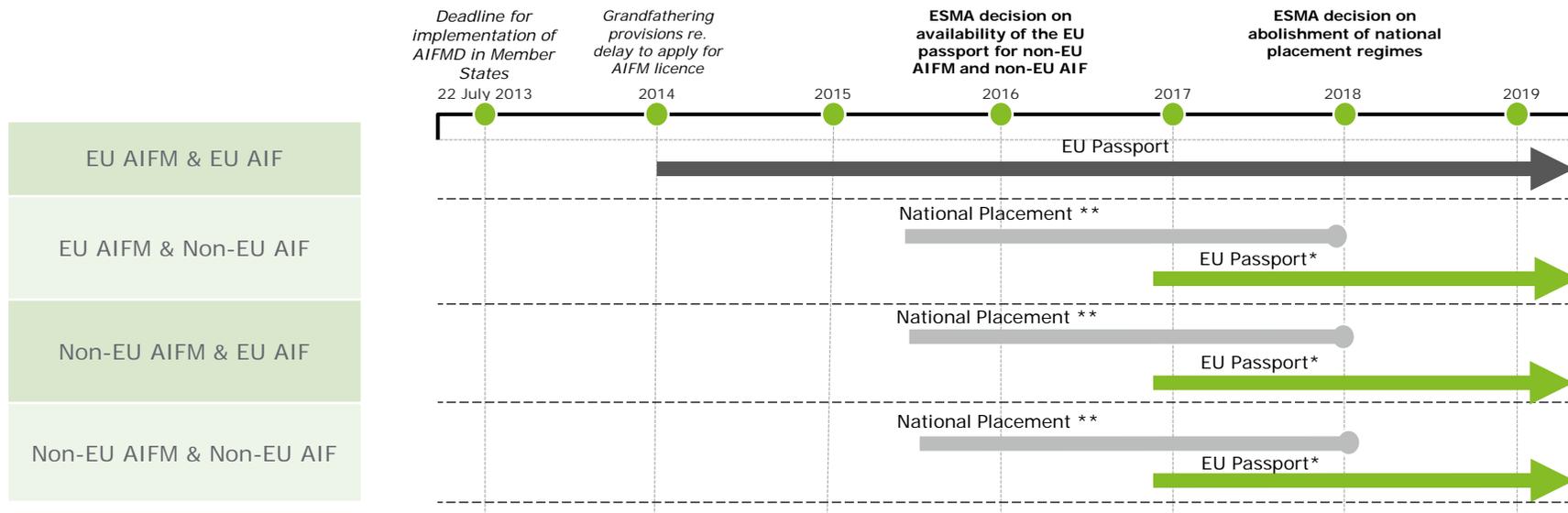
# Current AIFMD Marketing Landscape

- There are currently four possible structures in the regulatory landscape which are based on:
  - The domicile where the AIFM is established: EU AIFM vs. Non-EU AIFM
  - The domicile where the AIF is established: EU AIF vs. Non-EU AIF

## Structure and AIFMD Marketing in the EU

The AIFM Directive foresees different timelines for making an EU distribution passport available, and for ending EU National Placement regimes \*\*

- Prior to 2018, marketing in the EU via either an EU passport or National Placement Regimes is, in principle, possible
- After 2018, only marketing through an EU passport will be possible

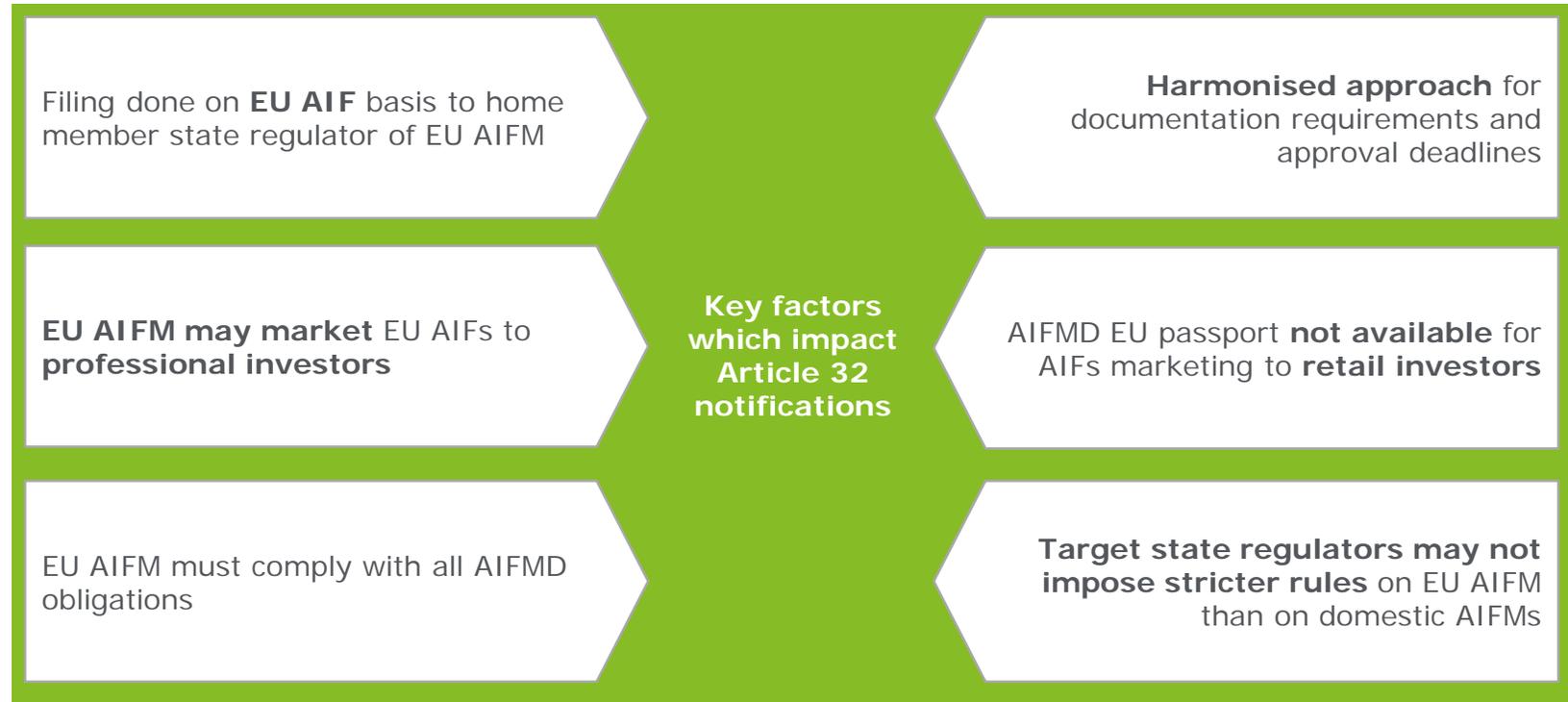


\* New ESMA Opinion published 19 July 2016; awaiting news on potential passport introduction within next three months

\*\* Member States may decide at their own discretion to end National Placement regimes anytime prior to 2018

# Article 32 – Marketing via Passport

## Operational Considerations



*This applies to EU AIFMs managing and marketing AIFs*

# Article 32 – Marketing via Passport

## Key Requirements for selection of EU countries

### Marketing to professional investors

Selected EU Member States	Austria	Denmark	France	Germany	Spain	United Kingdom
<b>Examples of documents for Notification</b>	Standard documents Proof of payment of fees Power of Attorney (if notification submitted by third-party)	Standard documents Power of Attorney (if notification submitted by third party)	Standard documents Proof of payment of fees	Standard documents Proof of payment of fees Power of Attorney (if notification submitted by third-party) Specific wording on distribution activities	Standard documents Representation agreement for purposes of CNMV fees	Standard documents
<b>Initial Registration fees</b>	Euro 1,100 (umbrella + 1st sub-fund) Euro 220 per additional sub-fund	N/A	Euro 2,000 per sub-fund	Euro 772 per sub-fund	EUR 2,500 per AIF (regardless of the number of sub-funds)	N/A
<b>Annual Maintenance fees</b>	Euro 600 (umbrella + 1st sub-fund) Euro 200 per additional sub-fund	DKK 2,000 per sub-fund (2004 prices) (Approximately DKK 4,125 in 2014 prices, so approximately EUR 555)	Euro 2,000 per sub-fund	Euro 216 per sub-fund	EUR 3,000 per AIF (regardless of the number of sub-funds)	N/A
<b>Time to market</b> must always wait for formal approval from regulator before commencing marketing	20 working days from receipt of complete submission by the AIFM's home state regulator					

\* As per August 2016; provided on a best endeavours basis using information in the public domain; regulators reserve the right to change requirements at any time

# Options if AIFM unable to access “Marketing Passport”

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## Do Nothing

- Not an option if you raise capital or approach investors in the EU

## Reverse Solicitation

- Sometimes presented as a possible “option” but
  - is not a strategy for raising capital in the EU
  - requires complexity in demonstrating total absence of marketing
  - poses a major future compliance risk as cooperation is foreseen between EU and non-EU authorities

## Opt for National Placement in the interim

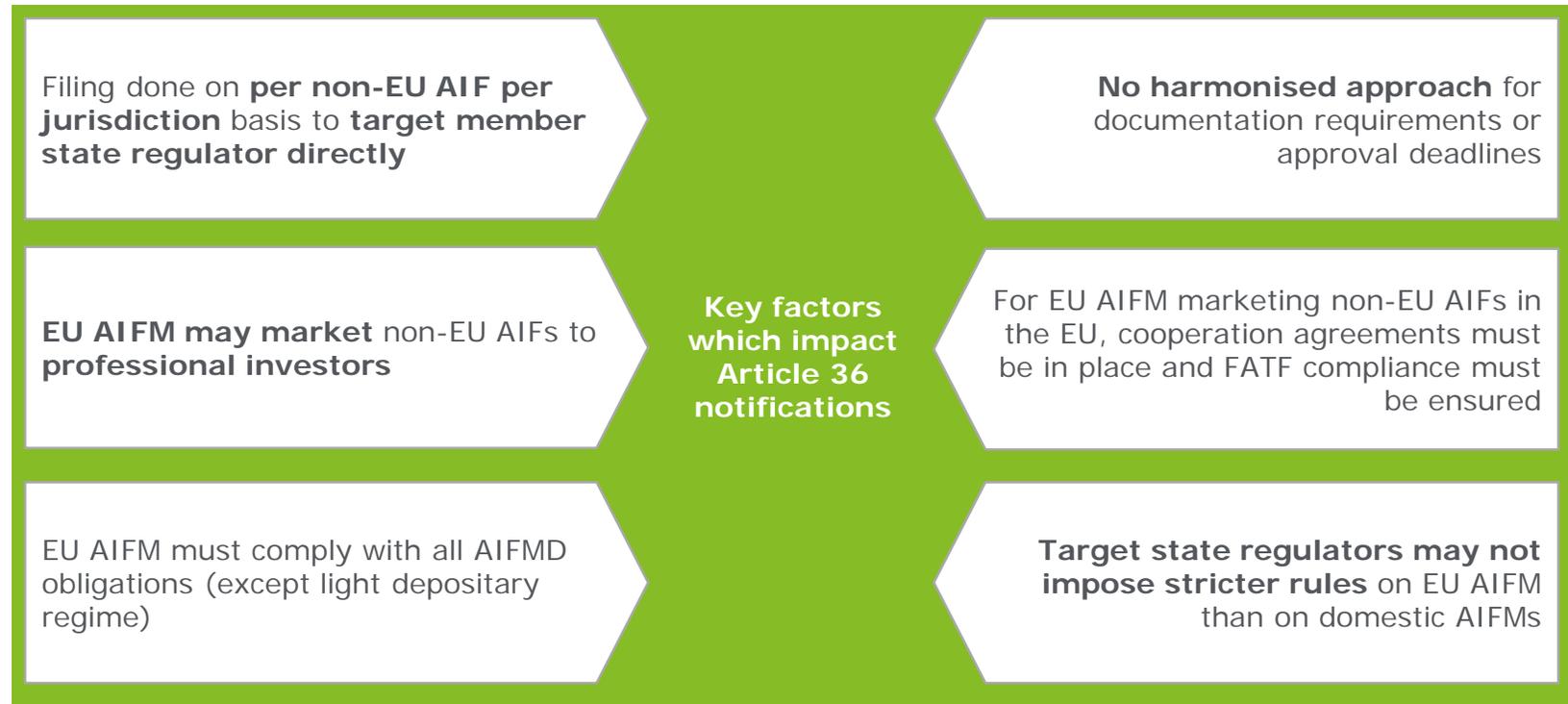
- Best “low” requirements
- Possible until 2018, uncertain thereafter
- Specific regulatory requirements
- National Placement Regimes are not harmonised
- Prudential reporting to both regulators and investors in each jurisdiction where the AIFs are distributed

## Wait until the Passport.....

- Full fledged and most costly option
- Preferred solution from a regulatory standpoint if you actively raise capital in the EU or wish to have easier market access to EU investors
- Possibility for efficient solutions leveraging existing infrastructure and potential fund restructuring to minimise cost impact for non-EU investors

# Article 36 – Marketing via Notification

## Operational Considerations



*This applies to EU AIFMs managing and marketing non-EU AIFs or EU feeder AIF investing in non-EU AIFs; not all Member States have opened up this possibility*

# Article 36 – Marketing via Notification

## Key Requirements for selection of EU countries

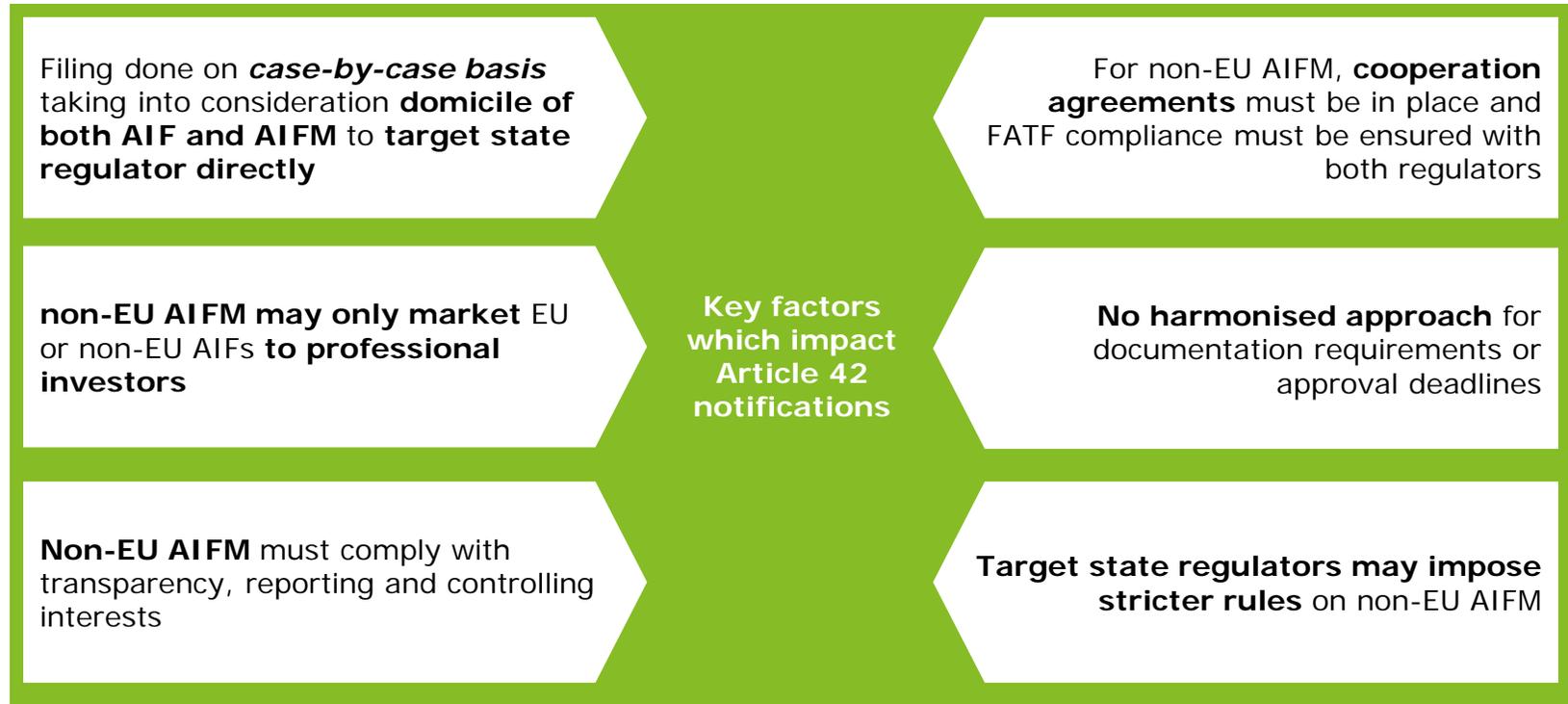
### Marketing to professional investors

Selected EU Member States	Austria	Denmark	France	Germany	Spain	United Kingdom
<b>Examples of documents for Notification</b>	AIF Prospectus, articles of incorporation, financial statements, notification letter Proof of payment of fees	AIF Prospectus, articles of incorporation, financial statements, notification letter Reciprocity statement from non-EU AIF's home state regulator	AIF Prospectus, articles of incorporation, financial statements, notification letter	AIF Prospectus, articles of incorporation, financial statements, notification letter Proof of payment of fees	Although legally possible, it will be very difficult in practice as the CNVM requires, inter alia, that non-EU AIFs are similar to Spanish AIFs and has a discretionary power to accept such notifications or not	AIF Prospectus, articles of incorporation, financial statements, notification form
<b>Examples of other requirements</b>	Compliance with depositary light regime Certificate of compliance of non-EU AIF with AIFMD issued by home state regulator of AIF	Compliance with depositary light regime Proof of registration of the non-EU AIF issued by the home state regulator	Compliance with depositary light regime Appointment of agent centralisateur	Compliance with depositary light regime Declaration signed by EU AIFM of compliance with specific requirements Notion of Semi-professional investors	N/A	Compliance with depositary light regime
<b>Initial Registration fees</b>	Euro 2,200 (AIF + 1 <sup>st</sup> sub-fund) plus Euro 440 per additional sub-fund	Currently understood to be DKK 2,500 per notification	Euro 2,000 per AIF & Euro 2,000 per sub-fund	Euro 3,291 per sub-fund	N/A	GBP 250 per AIF (if non-UK AIFM)
<b>Annual Maintenance fees</b>	Euro 1,200 (AIF + 1 <sup>st</sup> sub-fund) plus Euro 440 per additional sub-fund	Currently understood to be DKK 4,155	Euro 2,000 per AIF & Euro 2,000 per sub-fund	Euro 772 per sub-fund	N/A	GBP 500 per AIF (if non-UK AIFM)
<b>Time to market</b> must always wait for formal approval from regulator before commencing marketing	2 months	3 months (which may be extended to 6 months)	2 months	2 to 5 months depending if master feeder structure	N/A	A few days

\* As per August 2016; provided on a best endeavours basis using information in the public domain; regulators reserve the right to change requirements at any time

# Article 42 – Marketing via National Placement Regime

## Operational Considerations



***This applies to non-EU AIFMs managing and marketing both EU and non-EU AIFs; not all Member States have opened up this possibility***

# Article 42 – Non-EU AIFM still needs to comply with AIFM Directive

## Minimum Obligations

Although AIFM Directive does not strictly apply to non-EU AIFMs, to access EU markets via NPR, the non-EU AIFM must comply with the following as a minimum\*

### Article 22 AIFMD

- Each AIF to issue an annual report no later than 6 months after its year end
- Detailed content requirements are prescribed in the Directive

### Article 23 AIFMD

- AIF Offering documentation must contain specific references as per the Directive
- Information must be present in the offering documents as sent to the host state regulators as part of the notification process

### Article 24 AIFMD

- Submission of regular risk reporting information to each host state regulator where AIF is approved for distribution
- Detailed content requirements are prescribed in the Directive

\* *Compliance with other requirements will be determined on a case-by-case basis depending on the AIF's domicile, its structure and local jurisdictional requirements where the AIF is to be registered for distribution to professional investors*

# Article 42 – Key Requirements

## Key Requirements for selection of EU countries

Marketing to professional investors						
Selected EU Member States	Austria	Denmark	France	Germany	Spain	United Kingdom
<b>Examples of documents for Notification</b>	AIF Prospectus, articles of incorporation, financial statements, notification letter Proof of payment of fees	AIF Prospectus, articles of incorporation, financial statements, notification letter Reciprocity statement from non-EU AIFM's home state regulator	AIF Prospectus, articles of incorporation, financial statements, notification letter	AIF Prospectus, articles of incorporation, financial statements, notification letter Proof of payment of fees	Although legally possible, it will be very difficult in practice as the CNVM requires, inter alia, that non-EU AIFs are similar to Spanish AIFs and has a discretionary power to accept such notifications or not	AIF Prospectus, articles of incorporation, financial statements, notification form
<b>Examples of other requirements</b>	Full compliance with AIFMD incl Article 21 (depository) Appointment of local representative Declaration by non-EU AIFM of full compliance with AIFMD	Compliance with depository light regime Proof of registration of the non-EU AIF issued by the home state regulator	Compliance with depository light regime Appointment of agent centralisateur	Compliance with depository light regime Agreement between AIFM and depository must be filed All info required for both feeder and master structure	N/A	Compliance with depository light regime
<b>Initial Registration fees</b>	Euro 4,500 (AIF + 1 <sup>st</sup> sub-fund) plus Euro 1,000 per additional sub-fund	Currently understood to be DKK 2,500 per notification	Euro 2,000 per AIF & Euro 2,000 per sub-fund	Euro 6,582 per sub-fund	N/A	GBP 250 per AIF
<b>Annual Maintenance fees</b>	Euro 2,500 (AIF + 1 <sup>st</sup> sub-fund) plus Euro 600 per additional sub-fund	Currently understood to be DKK 4,155	Euro 2,000 per AIF & Euro 2,000 per sub-fund	Euro 1,088 per sub-fund	N/A	GBP 500 per AIF
<b>Time to market</b> must always wait for formal approval from regulator before commencing marketing	4 months	3 months (which may be extended to 6 months)	2 months	5 to 8 months depending if master feeder structure	N/A	A few days

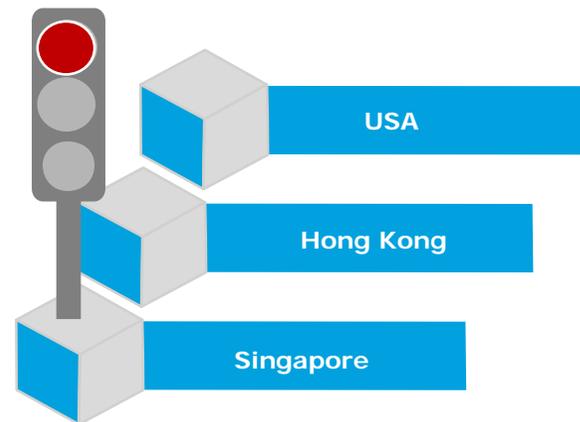
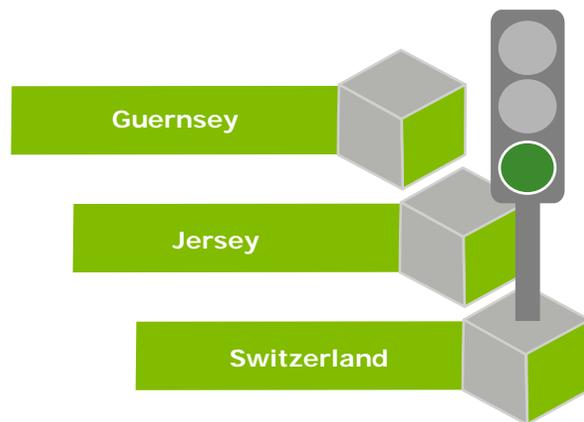
\* As per August 2016; provided on a best endeavours basis using information in the public domain; regulators reserve the right to change requirements at any time

# ESMA opinion and advice of July 2015

## ESMA jurisdictions covered

ESMA chose six countries to review based on feedback received to its consultation and on the volume of non-EU funds and managers which currently operate within the EU.

ESMA gave its feedback on these countries focusing on four key areas:

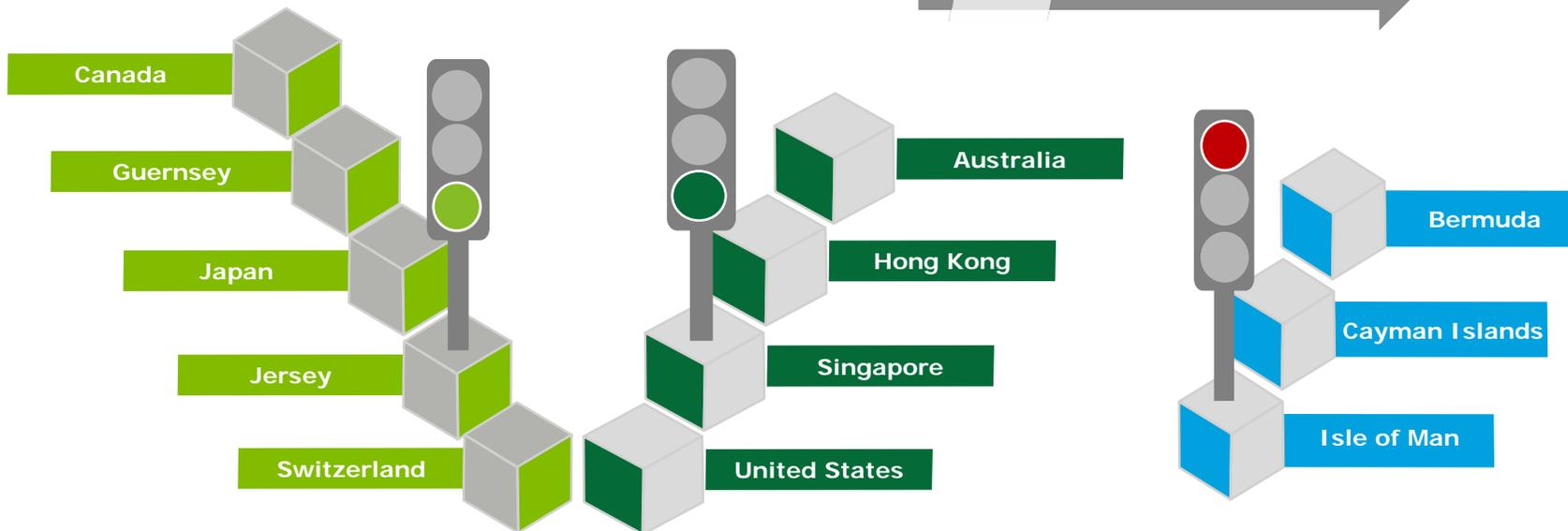


# ESMA opinion and advice of July 2016

## ESMA jurisdictions covered

ESMA chose six additional countries to review based on feedback received to its consultation and on the volume of non-EU funds and managers which currently operate within the EU.

ESMA gave its feedback on these countries focusing on four key areas:



# ESMA advice on potential extension of passport to Australia

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## Investor Protection



There are differences between the Australian regulatory framework and the AIFMD; however these differences are not seen as a significant obstacle impeding the application of the AIFMD passport to Australia.

## Market Disruption



No significant obstacles regarding market disruption would impede the application of the AIFMD passport to Australia provided that class order reliefs\* are extended to all EU Member States.

## Obstacles to Competition



No significant obstacles regarding obstacles to competition would impede the application of the AIFMD passport to Australia provided that class order reliefs\* are extended to all EU Member States.

## Monitoring of Systemic Risk



No significant obstacles regarding monitoring of systemic risk would impede the application of the AIFMD passport to Australia.

*Class order reliefs are exemptions implemented by the Australian Securities & Investments Commission (ASIC) to facilitate cross-jurisdictional financial investments to foreign financial services providers from the requirements to hold an Australian financial services licence. Currently only two EU Member States can benefit from these class order reliefs.*

*However the ASIC has indicated they are willing to discuss extending this to EU AIFMs or UCITS managers from the EU Member States more generally on a reciprocal basis.*

# ESMA advice on potential extension of passport to Hong Kong

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## Investor Protection



If assessment only considered in relation to AIFs, then no significant obstacles regarding investor protection would impede the application of the AIFMD passport to Hong Kong.

## Market Disruption



If assessment only considered in relation to AIFs, then no significant obstacles regarding market disruption would impede the application of the AIFMD passport to Hong Kong.

## Obstacles to Competition



If assessment only considered in relation to AIFs, then no significant obstacles regarding obstacles to competition would impede the application of the AIFMD passport to Hong Kong.

## Monitoring of Systemic Risk



If assessment only considered in relation to AIFs, then no significant obstacles regarding monitoring of systemic risk would impede the application of the AIFMD passport to Hong Kong.

*However ESMA notes that the Securities & Futures Commission (SFC) operates a regime in relation to the access of retail funds including UCITS where certain jurisdictions are deemed to be “acceptable inspection regimes” (AIR), with the consequence that only five Member States are deemed as AIR. However, this procedure is applicable only for funds offered to retail investors.*

*Being considered as AIR by the SFC notably means that market access conditions of UCITS marketed to retail investors established in those Member States which are AIR in Hong Kong are different from the market access conditions of UCITS marketed to retail investors established in other Member States.*

# ESMA advice on potential extension of passport to Singapore

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## Investor Protection



If assessment only considered in relation to AIFs, then no significant obstacles regarding investor protection would impede the application of the AIFMD passport to Singapore.

## Market Disruption



If assessment only considered in relation to AIFs, then no significant obstacles regarding market disruption would impede the application of the AIFMD passport to Singapore.

## Obstacles to Competition



If assessment only considered in relation to AIFs, then no significant obstacles regarding obstacles to competition would impede the application of the AIFMD passport to Singapore.

## Monitoring of Systemic Risk



If assessment only considered in relation to AIFs, then no significant obstacles regarding monitoring of systemic risk would impede the application of the AIFMD passport to Singapore.

*However ESMA notes that some EU Member States are considered as 'recognised' by the Monetary Authority of Singapore (MAS), but most of them are not. However, this procedure is applicable only for funds offered to retail investors.*

*Being 'recognised' by the MAS notably means that the market access conditions of UCITS marketed to retail investors established in those Member States which are recognised in Singapore are different from the market access conditions of UCITS marketed to retail investors established in other Member States.*

# ESMA advice on potential extension of passport to the U.S

## Investor Protection



There are differences between the U.S regulatory framework and the AIFMD; however these differences are not seen as a significant obstacle impeding the application of the AIFMD passport to the U.S.

## Market Disruption



Different market access conditions would apply to U.S funds dedicated to professional investors in the EU to those applicable to EU funds dedicated to professional investors in the U.S. This is due to registration requirements under the U.S regulatory framework which generate additional costs

## Obstacles to Competition



Different market access conditions would apply to U.S funds dedicated to professional investors in the EU to those applicable to EU funds dedicated to professional investors in the U.S. This is due to registration requirements under the U.S regulatory framework which generate additional costs

## Monitoring of Systemic Risk



- No significant obstacles regarding the monitoring of systemic risk impeding the application of the AIFMD passport to the U.S

*However for funds marketed by managers not involving any public offering, conditions which would apply to U.S funds dedicated to professional investors in the EU would be broadly comparable to the market access conditions of EU funds dedicated to professional investors in the U.S.*

*Hence, if passport were to be granted to the U.S, EU legislators may wish grant passport only to U.S funds:*

- dedicated to professional investors to be marketed in the EU by managers not involving any public offering;
- which are not mutual funds (under the 1940 Investment Company Act);
- which restrict investment to professional investors as defined in AIFMD.

# ESMA advice on potential extension of passport to Bermuda

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## Investor Protection



No definitive advice can be provided until the final version of the AIFMD like regime is available.

## Market Disruption



No significant obstacles regarding market disruption would impede the application of the AIFMD passport to Bermuda.

## Obstacles to Competition



No significant obstacles regarding obstacles to competition would impede the application of the AIFMD passport to Bermuda.

## Monitoring of Systemic Risk



No significant obstacles regarding monitoring of systemic risk would impede the application of the AIFMD passport to Bermuda.

*ESMA is not in a position to provide the European Parliament, Council and Commission with a more thorough assessment than the one presented due to the nature and timeline of the assessment.*

# ESMA advice on potential extension of passport to Cayman Islands

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## Investor Protection



No definitive advice can be provided until the final version of the AIFMD like regime is available.

## Market Disruption



No significant obstacles regarding market disruption would impede the application of the AIFMD passport to the Cayman Islands.

## Obstacles to Competition



No significant obstacles regarding obstacles to competition would impede the application of the AIFMD passport to the Cayman Islands.

## Monitoring of Systemic Risk



No definitive advice can be provided until the macro-prudential policy framework has been put in place. It is expected this policy will enhance the current systemic risk monitoring.

*ESMA is not in a position to provide the European Parliament, Council and Commission with a more thorough assessment than the one presented due to the nature and timeline of the assessment.*

# ESMA advice on potential extension of passport to Isle of Man

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## Investor Protection



The absence of either a regulatory project of putting in place an AIFMD-like regime makes it difficult to assess with the investor protection criterion same level of certainty the in a way that would be consistent with the assessments of the other non-EU countries.

## Market Disruption



No significant obstacles regarding market disruption would impede the application of the AIFMD passport to the Isle of Man.

## Obstacles to Competition



No significant obstacles regarding obstacles to competition would impede the application of the AIFMD passport to the Isle of Man.

## Monitoring of Systemic Risk



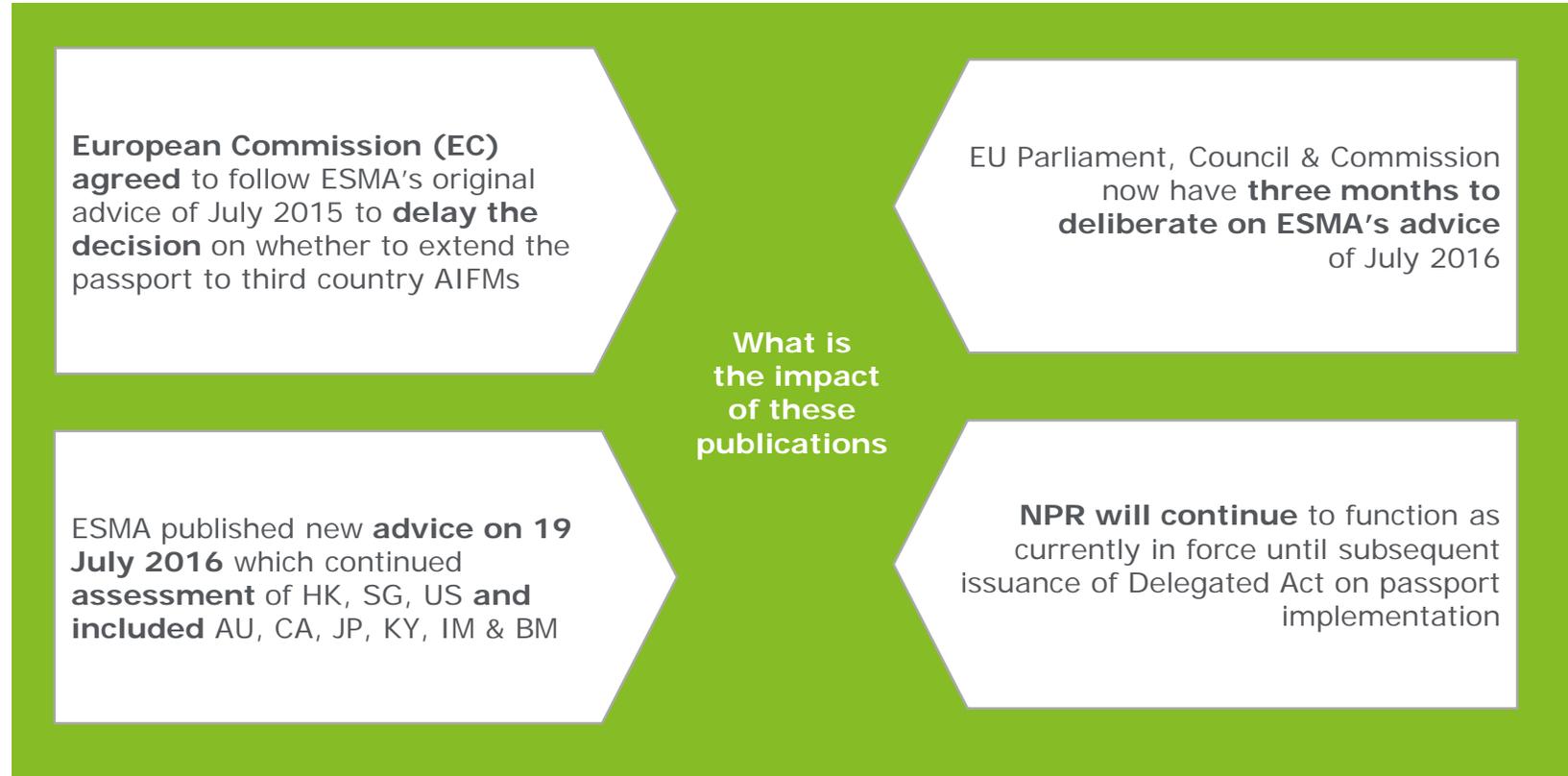
No significant obstacles regarding monitoring of systemic risk would impede the application of the AIFMD passport to the Isle of Man.

*ESMA is not in a position to provide the European Parliament, Council and Commission with a more thorough assessment than the one presented due to the nature and timeline of the assessment.*

*ESMA also notes that some EU Member States are considered as 'designated territories', but most of are not. However, this procedure is applicable only for funds offered to retail investors. Being considered as a designated territory notably means that market access conditions of UCITS marketed to retail investors established in those Member States considered as such designated territories' are different from the market access conditions of UCITS marketed to retail investors established in other Member States. The Isle of Man Financial Services Authority has indicated that they would have no objection to extending the list of designated territories such that any EEA UCITS could apply for recognition through this route.*

# Impact of ESMA advice/opinion and next steps

## Regulatory Outlook



Brexit



# Questions?

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