Contacts

Aisling Costello  
Senior Manager – Investment Management Advisory  
Deloitte & Touche Ireland  
E: acostello@deloitte.ie  
T: +353 1 417 2834

Paola Liszka Draper  
Senior Manager – Investment Management – Regulatory Consulting  
Deloitte Luxembourg  
E: pliszkadrapier@deloitte.lu  
T: +352 451 452 803

Ciara Smith  
Senior Manager – Investment Management and Private Equity  
Deloitte UK  
E: cismith@deloitte.co.uk  
T: +44 20 7303 6850
Agenda

- AIFMD Overview
- ESMA Publication
- Current Distribution Options
- Jurisdictions covered
- ESMA statistics
- Impact of ESMA Opinion & next steps
AIFMD Overview
AIFMD Overview

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

Key Objectives
- Extend appropriate regulation and oversight to all alternative actors
- Improve financial stability
- Monitor systemic risk
- Increase transparency towards and protection of investors and stakeholders
- Create European market for alternative investments via passports for management and marketing activities

Who is impacted?
- Managers
  - Alternative Investment Fund Management Companies
- Investors
  - Professional Investors
  - Retail investors are not in scope
- Funds
  - Retail non-UCITS funds
  - Non-EU funds managed or marketed in the EU
- Depositary
- Other Service Providers

How?
- AIFMs need to apply for authorisation to manage AIFs
- AIFMD introduces “passport” enabling AIFMs to offer their management services and market their AIFs throughout the EU
- Regulation of publically distributed AIFs in the EU to professional investors
- Effective marketing across 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.

* Passport anticipated end 2015 / early 2016 depending on ESMA opinion to be issued in July 2015
** Member States may decide at their own discretion to end National Placement regimes anytime prior to 2018
ESMA Call for evidence
AIFMD passport & third country AIFMs

Call for evidence published
- ESMA/2014/1340 on AIFMD passport and third country AIFMs

Deadline for responses
- Over 45 responses received
  - 15 from companies
  - 30 from associations and regulators

22 July 2015
delayed to 30 July 2015

ESMA to issue an opinion and advice on the functioning of
- the EU passport under AIFMD (i.e. Article 32 AIFMD)
- the marketing of non-EU AIFs by EU AIFMs in the EU (i.e. Article 36 AIFMD)
- the management and/or marketing of AIFs by non-EU AIFMs in the EU (i.e. Article 42 AIFMD)

October 2015

Having received a positive advice from ESMA
- Commission shall adopt delegated act specifying the date when rules set out in Articles 35, 37 and 41* will become applicable in all Member States
  - If ESMA is late or issues any objections, the Commission will effectively delay the introduction of Articles 35, 37 and 41.

* Article 35 – Conditions for marketing in the Union with a passport of a non-EU AIF managed by an EU AIF
  - Will eventually replace Article 36 notifications

Article 37 - Authorisation of non-EU AIFMs intending to manage EU AIFs and/or market AIFs managed by them in the Union in accordance with Article 39 or 40
  - Article 39 - Conditions for the marketing in the Union with a passport of EU AIFs managed by a non-EU AIFM
  - Article 40 - Conditions for the marketing in the Union with a passport of non-EU AIFs managed by a non-EU AIFM
  - Articles 39 & 40 will eventually replace Article 42 notifications

Article 41 - Conditions for managing AIFs established in Member States other than the Member State of reference by non-EU AIFMs
ESMA Publications

Opinion in the Functioning of the AIFMD passport and NPPR’s

- ESMA’s opinion pursuant to Article 67(1) of the AIFMD on the functioning of the passport for EU AIFMs pursuant to Articles 32 and 33 of the AIFMD and on the functioning of the NPPRs set out in Articles 36 and 42 of the AIFMD.
- The document consists of
  - feedback on the surveys conducted by ESMA on the AIFMD passport
  - opinion on the functioning of the EU passport
  - opinion on the functioning of the NPPRs
  - feedback received by ESMA via the responses to the call for evidence

Advice on the application of the AIFMD passport

- ESMA’s advice on the application of the passport to non-EU AIFMs and AIFs in accordance with the rules set out in Article 35 and 37 to 41 of the AIFMD.
- Detailed assessment of the countries considered for extension of the passport including methodologies, criteria and data
- Specific analysis and advice on each of the 6 countries selected for consideration.
- Overview of those countries not considered
- Summary of the responses to the call for evidence on transversal views on the impact of the possible extension of the passport to non-EU AIFMs on competition, market disruption, investor protection and the monitoring of systemic risk

Both documents have been sent to the European Commission, European Parliament and European Council. The European Commission has 3 months to accept ESMA’s advice and extend the AIFMD passport to non EU domiciled AIFM’s.
Countries and considerations

Non-EU countries identified as the domiciles of non-EU AIFMs that market AIFs in the Member States examined and/or domiciles of non-EU AIFs marketed in the Member States examined

- Australia
- Bahamas
- Bermuda
- Brazil
- British Virgin Islands
- Canada
- Cayman Islands
- Curacao
- Guernsey
- Hong Kong
- Isle of Man
- Japan
- Jersey
- Mexico
- Mauritius
- Singapore
- South Africa
- South Korea
- Switzerland
- Thailand
- USA
- US Virgin Islands

Sufficient level of information about each relevant Non-EU jurisdiction?

Amount of activity currently bring carried out under NPPR

Existing knowledge and experience of EU NCA’s with respect to their counterparts

Efforts made by stakeholders to engage in the process

- USA
- Guernsey
- Jersey
- Hong Kong
- Switzerland
- Singapore
Countries and considerations

- USA
- Guernsey
- Jersey
- Hong Kong
- Switzerland
- Singapore

MoU

- Investor Protection
- Obstacles to Competition
- Market Disruption
- Systemic risk monitoring

- Guernsey
- Jersey
- Switzerland
Current Distribution Options
Scope & Marketing Options

**Scope**

- **Professional investors**
- **AIFM**
  - EU AIFM managing and marketing EU or non-EU AIF
  - Non-EU AIFM managing EU AIF
  - Non-EU AIFM marketing EU or non-EU AIF within the EU
- **AIF**

**EU AIFM + EU AIF (Article 32)**

Marketing in the EU possible via marketing passport = marketing passport

**EU AIFM + EU / Non-EU AIF (Article 36)**

Marketing in EU state only possible via notification to target state regulator = National placement rule

**Non-EU AIFM + EU / Non-EU AIF (Article 42)**

Marketing to EU state only possible via notification to target state regulator = National placement rules

- AIFMD does not regulate the **product** (i.e. the AIF) but the AIFM
- AIFMD does not grant a **distribution passport** to the AIF but the AIFM
- **Investment policy** as such does not qualify an investment fund as AIF; rather all investment funds that do not qualify as UCITS, are *de facto* AIFs
Article 32 – Marketing via EU Passporting

Operational Considerations

Filing done on **EU AIF** basis to home member state regulator of EU AIFM

**EU AIFM may market** EU AIFs to professional investors

EU AIFM must comply with all AIFMD obligations

**Harmonised approach** for documentation requirements and approval deadlines

**Key factors** which impact Article 32 notifications

AIFMD EU passport not available for AIFs marketing to retail investors

**Target state regulators may not impose stricter rules** on EU AIFM than on domestic AIFMs

This applies to EU AIFMs managing and marketing EU AIFs
Current AIFMD marketing options if AIFM is unable to access EU passport

- **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

- Filing done on per non-EU AIF per jurisdiction basis to target member state regulator directly
- Key factors which impact Article 36 notifications
  - EU AIFM may market non-EU AIFs to professional investors
  - EU AIFM must comply with all AIFMD obligations (except light depositary regime)
- Target state regulators may not impose stricter rules on EU AIFM than on domestic AIFMs

No harmonised approach for documentation requirements or approval deadlines
- For EU AIFM marketing non-EU AIFs in the EU, cooperation agreements must be in place and FATF compliance must be ensured

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

Link’n Learn - AIFMD II: ESMAs response
Article 42 – Marketing via NPR
Operational Considerations

Filing done on **case-by-case basis** taking into consideration domicile of both AIF and AIFM to target state regulator directly

For non-EU AIFM, **cooperation agreements** must be in place and FATF compliance must be ensured with both regulators

**Key factors**

**non-EU AIFM** may only market EU or non-EU AIFs to professional investors

**No harmonised approach** for documentation requirements or approval deadlines

**Non-EU AIFM** must comply with transparency, reporting and controlling interests

**Target state regulators** may impose stricter rules on non-EU AIFM

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

ESMA chose 6 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 4 areas:

1. Investor Protection
2. Market Disruption
3. Obstacles to Competition
4. Monitoring of Systemic Risk

We summarise ESMA’s findings under each of these topics for each of the 6 countries analysed.
Guernsey Summary

Overall decision

ESMA has determined that there are no significant obstacles regarding investor protection, competition, market disruption and the monitoring of systemic risk impeding the application of the AIFMD passport to Guernsey.

Memorandums of Understanding

ESMA believes that there have been positive experiences in terms of cooperation between NCAs and the Authority of Guernsey. One NCA explicitly indicated that they are of the opinion of that existing MoU has worked well. The Guernsey NCA has responded within 15 days when this NCA has asked for assistance.
Joint Channel Islands (Jersey and Guernsey) Financial Services Ombudsman scheme will be open to all individuals/small businesses. Professional clients may use the Courts, alternative dispute resolution through mediation mechanisms and the Commission's official complaint handling procedure.

Guernsey has implemented an ‘opt-in’ AIFMD-like regime for Guernsey AIFMs wishing to market their AIFs in the EU under the AIFMD passport requirements.

Traditional trustee oversight of open-ended funds resembles AIFMD requirements. The AIFMD depositary rules will apply under the above mentioned opt-in regime.

This is based on an impact and risk based supervision model. The current regime contains eleven discrete risk categories. No set quantitative remuneration rules, but management remuneration is an evaluation component of supervised entities' business model risk; governance risk; and conduct risk. The Guernsey opt-in AIFMD regime is identical to the EU regime.

There is only one NCA in Guernsey with oversight duties. The IOSCO FSAP on Guernsey dates back to 2009 and Guernsey received positive outcomes at the time.
ESMA determined that granting the passport to non-EU AIFMs would probably result in more Guernsey AIFs on the EU market, especially hedge funds. They noted that it is difficult to predict the impact on investor choice from the increased number of funds made available on the EU market in the long term.

ESMA concluded that EU-AIFMs that wish to establish business in Guernsey have to comply with the same rules as national AIFMs and that there are no identified competition issues on that aspect.
Reporting obligations are similar to the AIFMD reporting obligations.

IOSCO Principle 6 (The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate)

ESMA believes that Guernsey has frameworks in place for addressing systemic risks.
Overall Decision

ESMA has determined that there are no significant obstacles regarding investor protection, competition, market disruption and the monitoring of systemic risk impeding the application of the AIFMD passport to Jersey.

Memorandums of Understanding

ESMA understands that there have been positive experiences in terms of cooperation between NCAs and the Authority of Jersey. The Jersey Authority indicated that they have provided assistance to 21 European authorities – both in the funds sector and in other sectors (including the Spanish tax authority). One NCA explicitly indicated that they are of the opinion of that existing MoU has worked well. The Jersey NCA has responded within 15 days when this NCA has asked for assistance.
Financial Services
Ombudsman scheme will be open to all individuals/small businesses; a complaints process through the Jersey Commission.
Jersey has put in place an AIFMD-like regime which is an opt-in regime for Jersey AIFMs wishing to market their AIFs in the EU under the AIFMD passport requirements.

ESMA's overall view
The requirements are similar to those under AIFMD based on IOSCO principles rather than AIFMD requirements. The requirement for a custodian relates to open-ended Jersey funds rather than closed-ended. The depositary of a Jersey AIF will need to comply with the AIFMD requirements in addition to the Jersey requirements.

Remuneration
They follow the ESMA guidance in relation to third countries (disclosure) but they have no other specific requirements currently. They are however keeping this under review and would be able to implement specific AIFMD remuneration requirements if needed.

IOSCO principles
There is only one NCA with oversight duties.
Market Disruption and Obstacles to Competition

ESMA believes that extending the passport to non-EU AIFMs would probably result in more Jersey AIFs on the EU market, especially hedge funds.

ESMA found that EU-AIFMs that wish to establish business in Jersey have to comply with the same rules as national AIFMs and concluded that there are no identified competition issues on that aspect.
Monitoring of Systemic Risk

Reporting obligations in Jersey are similar to the AIFMD reporting obligations.

IOSCO Principle 6 (The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate)

ESMA found that Jersey has frameworks in place for addressing systemic risks.
Switzerland

General Advice on the Potential Extension of the Passport to Switzerland

**Overall decision**

ESMA advises that there will be no significant obstacles impeding the potential application of the AIFMD passport to Switzerland, pending the amendment to the Federal Act on Stock Exchanges and Securities Trading (SESTA) on 1 January 2016. One provision of the previous version of the Act that was potentially problematic is due to be removed following this new amendment.

**Memorandums of Understanding**

FINMA indicated that Switzerland has already concluded bilateral agreements (MoUs) with all interested EU Member States.

Generally positive experiences have been reported by NCAs on the cooperation with the Swiss Authority.

One NCA reported that the cooperation process set out by article 38 SESTA envisages some requirements for the transmission of information by the Swiss Authority to foreign National Competent Authorities. ESMA considered that the extent to which these requirements may affect the effectiveness of the entire cooperation process in terms of complexity and length merited further investigation.
The requirements are overall similar to those under AIFMD. They differ on some specific points notably related to the situations where the appointment of a depositary is not mandatory.

FINMA has issued a Circular which sets out minimum standards for remuneration schemes of financial institutions which are more simple than the AIFMD rules but are comparable.
ESMA found no evidence of significant obstacles regarding competition and market disruption impeding the application of the AIFMD passport to Switzerland. However, the extent to which there could be different treatments of EU funds and managers depending on the existence of bilateral agreements between the Swiss Authority and the authority of some Member States could be relevant to the assessment of whether there are obstacles to competition.
Monitoring of Systemic Risk

ESMA is of the view that it does not have evidence of major issues in relation to the monitoring of systemic risk impeding the application of the passport to Switzerland.

The IMF assessment on the implementation of IOSCO Principle 6 qualifies it as Broadly Implemented.

IOSCO Principle 6 (The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate)
USA
Summary

Overall Decision
ESMA advised that the European Institutions delay their decision on the application of the passport to the U.S. until such time as conditions which might lead to a distortion of competition are addressed.

Investor protection
ESMA noted that it could have benefited from having more time to assess the detailed information it received on the U.S. regulatory framework, particularly to allow ESMA to analyse whether the differences between the U.S. regulatory framework and AIFMD would affect their present assessment.

Memorandums of Understanding
ESMA found that the Memorandums of Understanding (MoUs) are in place and working well and that positive experiences have been reported by National Competent Authorities (NCAs).
US rules seem comparable to the rules in the EU including diversification, disclosure requirements, limitation in ability to borrow money, etc.

ESMA's overall view

Mutual funds must place and maintain assets with a qualified custodian. However, the U.S. system with self-custody would not be accepted for AIFMs and AIFs that intend to use the EU-passport.

Custodians/depositaries

SEC and the CFTC oversee the regulation of retail funds

Regulatory scope

Alignment of incentives between the AIFM and investors - similar remuneration rules as set out in the AIFMD do not seem to be currently applied in the U.S.

Remuneration

Alignment of incentives between the AIFM and investors - similar remuneration rules as set out in the AIFMD do not seem to be currently applied in the U.S.

IOSCO principles
Can EU-AIFMs market funds in the U.S.?

Generally more difficult to market foreign funds in this jurisdiction, especially to retail investors. EU-AIFMs can publicly market and sell issues/shares in the USA is to organise a fund in the USA and register this fund under the Investment Company Act of 1940. The Volcker rule could also be considered as part of the evaluation under these criteria.

Market access?

In the context of a potential extension of the AIFMD passport towards the U.S., there is the risk of an unlevel playing field between EU and non-EU AIFMs.

Market conditions of U.S. funds dedicated to professional investors?

ESMA believes that the registration requirements under the U.S. regulatory framework (which generate additional costs) would cause different market conditions if the AIFMD passport was extended. Consequently, ESMA considers that if similar conditions in terms of access to the market are to be considered by the European Institutions, the predominant competition criterion in deciding whether to extend the AIFMD passport to the U.S. should be delayed until better conditions of market access are granted by the U.S. Authorities to EU AIFMs/AIFs.
ESMA considers that the reporting obligations for U.S. Managers are extensive, but differ from the requirements in the AIFMD to some extent.

IOSCO Principle 6 (The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate)

The FSAP report indicated that IOSCO Principle 6 is Broadly Implemented.
Overall decision

Significant obstacles regarding investor protection, competition, market disruption and the monitoring of systemic risk impeding the application of the AIFMD passport to Hong Kong.

Memorandums of Understanding

Detailed information on the Hong Kong regulatory framework remains incomplete and more time is needed to analyse the extent to which the potential differences between the Hong Kong regulatory framework and the AIFMD may be material to the assessment on the potential application of the AIFMD passport to Hong Kong.

Unclear whether there is a level playing field between EU and non-EU AIFMs as regards market access and whether EU AIFMs and EU AIFs are treated in the same way as managers and collective investment schemes of Hong Kong in terms of regulatory engagement.

ESMA also notes that some EU Member States are considered as “acceptable inspection regimes” by the Hong Kong Authorities, but most of them are not.

Based on the feedback received from NCAs, ESMA is of the view that the experiences of cooperation are, in general terms, positive.
ESMA is of the view that there is no evidence of complaints not being adequately tackled by the non-EU NCA of Hong Kong. ESMA notes that the enforcement of the framework is guaranteed by the supervisory powers of the Hong Kong Securities and Futures Commission.

ESMA notes that according to the 2014 IMF financial sector detailed assessment of implementation on IOSCO objectives and principles of securities regulations on Hong Kong, Hong Kong was assessed as “Fully Implemented” for most principles. However, detailed information on the Hong Kong regulatory framework remains incomplete. Therefore, more time is needed.

Based on the 2014 IMF financial sector detailed assessment of implementation on IOSCO objectives and principles of securities regulation ESMA is of the view that a positive opinion can be expressed regarding the non-EU authority’s regulatory oversight with respect to the range of intermediaries and vehicles operating in Hong Kong.
Market Disruption and Obstacles to Competition

Taking into consideration the responses to the call for evidence launched by ESMA and the answers of the Hong Kong Authority to ESMA questions, and because some EU Member States, but not all of them are considered as “acceptable inspection regimes” by the Hong Kong Authority, it is not clear whether there is a level playing field between EU and non-EU AIFMs as regards market access and whether EU AIFMs and EU AIFs are treated in the same way as managers and collective investments schemes of Hong Kong in terms of regulatory engagement.
Monitoring of Systemic Risk

IOSCO Principle 6 (The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate)

The regulatory regime of Hong Kong was assessed as “Broadly Implemented”. The responses of Hong Kong Authority to ESMA’s questions are in line with this assessment.
Singapore

General Advice on the Potential Extension of the Passport to Singapore

**Overall decision**

ESMA advised that the European Institutions to delay their decision on the potential application of the AIFMD passport to Singapore.

**Memorandums of Understanding**

ESMA notes that the information regarding the cooperation between NCAs and the Monetary Authority of Singapore (MAS) is scarce and difficult to assess.
ESMA concluded that there is insufficient evidence to assess the extent to which there would be significant obstacles regarding investor protection impeding the application of the AIFMD passport to Singapore. Overall, the requirements in terms of investor protection seem to be fulfilled. The FSAP Report concluded that MAS is very strict when it comes to market entry and that the authorisation process is very detailed – however, the follow up and ongoing supervision does not keep those high standards. This might lead to difficulties with reporting and monitoring of systemic risk.

According to the 2013 IMF financial sector detailed assessment of implementation on IOSCO objectives and principles of securities regulation on Singapore (FSAP Report), all the relevant IOSCO principles are at least “broadly implemented”.

Regulatory Scope

Detailed information on the Singapore regulatory framework remains incomplete.
The FSAP report mentions that managers should have a “sufficient nexus with Singapore” and therefore should have at least SGD 500 Mio AuM in Singapore (EUR 335 Mio) to be authorised – this requirement should be investigated further as it could create a barrier to market access in the context of making the AIFM passport available to Singapore managers.

Currently only UCITS from LU, IE, FR, UK and DE are recognised in Singapore. Unclear whether this is because no managers of other Member States sought authorisation before, or if Singapore does not recognise UCITS from other Member States as equivalent.
Monitoring of Systemic Risk

IOSCO Principle 6 (The Regulator should have or contribute to a process to monitor, mitigate and manage systemic risk, appropriate to its mandate)

ESMA concluded that there was insufficient evidence to assess the extent to which there would be significant obstacles regarding the monitoring of systemic risk impeding the application of the AIFMD passport to Singapore.
ESMA Statistics
ESMA Statistics
Marketing into the UK: EU AIFM + non-EU AIF

% by jurisdiction of non-EU AIF marketed in the UK under Article 36 NPPR (Q3 2014)

- Cayman Islands: 76%
- Guernsey: 6%
- US: 6%
- Jersey: 10%
- Other: 2%

Total number of AIFs 343

% by jurisdiction of non-EU AIF marketed in the UK under Article 36 NPPR (Q4 2014)

- Cayman Islands: 84%
- Guernsey: 6%
- US: 8%
- Jersey: 2%
- Other: 10%

Total number of AIFs 362

% by jurisdiction of non-EU AIF marketed in the UK under Article 36 NPPR (Q3 & Q4 2014)

- Cayman Islands: 76%
- Guernsey: 7%
- US: 5%
- Jersey: 2%
- Other: 10%

Total number of AIFs 705

Source: ESMA Advice
ESMA Statistics
Marketing into the UK: non-EU AIFM + EU/non-EU AIF

% by jurisdiction of non-EU AIFMs marketing AIFs in the UK under Article 42 NPPR (Q3 2014)

- US
- Guernsey
- Cayman Islands
- Jersey
- Hong Kong
- Singapore
- Switzerland
- Other

53% total number of AIFMs 482

% by jurisdiction of non-EU AIFMs marketing AIFs in the UK under Article 42 NPPR (Q4 2014)

- US
- Guernsey
- Cayman Islands
- Jersey
- Hong Kong
- Singapore
- Switzerland
- Other

55% total number of AIFMs 490

% by jurisdiction of non-EU AIFMs marketing AIFs in the UK under Article 42 NPPR (Q3 & Q4 2014)

- US
- Guernsey
- Cayman Islands
- Jersey
- Hong Kong
- Singapore
- Switzerland
- Other

54% total number of AIFMs 972

Source: ESMA Advice
ESMA Statistics
Marketing into the UK: non-EU AIFM + EU/non-EU AIF

% by jurisdiction of AIFs marketed in the UK under Article 42 NPPR, Q3 2014

- Cayman Islands: 10%
- US: 3%
- Guernsey: 0%
- Jersey: 13%
- Singapore: 21%
- Hong Kong: 0%
- Switzerland: 0%
- Other: 0%

Total number of AIFs: 1073

% by jurisdiction of AIFs marketed in the UK under Article 42 NPPR (Q4 2014)

- Cayman Islands: 11%
- US: 4%
- Guernsey: 0%
- Jersey: 1%
- Singapore: 21%
- Hong Kong: 1%
- Switzerland: 0%
- Other: 0%

Total number of AIFs: 1121

% by jurisdiction of AIFs marketed in the UK under Article 42 NPPR (Q3 & Q4 2014)

- Cayman Islands: 12%
- US: 4%
- Guernsey: 1%
- Jersey: 0%
- Singapore: 21%
- Hong Kong: 0%
- Switzerland: 0%
- Other: 0%

Total number of AIFs: 2194

Source: ESMA Advice
ESMA Statistics
Marketing into Ireland: EU AIFM + non-EU AIF

% by jurisdiction of non-EU AIF marketed in Ireland under Article 36 NPPR (Q3 2014)

- Cayman Islands: 8%
- US: 8%
- Guernsey: 8%
- Other: 75%

Total number of AIFs 12

% by jurisdiction of non-EU AIF marketed in Ireland under Article 36 NPPR (Q4 2014)

- Cayman Islands: 0%
- US: 0%
- Guernsey: 0%
- Other: 100%

Total number of AIFs 15

% by jurisdiction of non-EU AIF marketed in Ireland under Article 36 (Q3 & Q4 2014)

- Cayman Islands: 89%
- US: 4%
- Guernsey: 4%
- Other: 4%

Total number of AIFs 27

Source: ESMA Advice
ESMA Statistics

Marketing into Ireland: non-EU AIFM + EU/non-EU AIF

% by jurisdiction of non-EU AIFMs marketing AIFs in Ireland under Article 42 NPPR (Q3 2014)

- US: 62%
- Guernsey: 7%
- Cayman Islands: 5%
- Jersey: 1%
- Switzerland: 1%
- Other: 1%

Total number of AIFMs 76

% by jurisdiction of non-EU AIFMs marketing AIFs in Ireland under Article 42 NPPR (Q4 2014)

- US: 48.1%
- Guernsey: 40.7%
- Cayman Islands: 7.4%
- Switzerland: 3.7%
- Other: 0.0%
- Hong Kong: 0.0%

Total number of AIFMs 27

% by jurisdiction of non-EU AIFMs marketing AIFs in Ireland under Article 42 NPPR (Q3 & Q4 2014)

- US: 58%
- Guernsey: 16%
- Cayman Islands: 6%
- Jersey: 1%
- Hong Kong: 1%
- Other: 2%

Total number of AIFMs 103

Source: ESMA Advice
ESMA Statistics

Marketing into Ireland: non-EU AIFM + EU/non-EU AIF

% by jurisdiction of AIFs marketed in Ireland under Article 42 NPPR (Q3 2014)

- Cayman Islands
- US
- Ireland
- Guernsey
- Jersey
- Luxembourg
- UK
- Hong Kong
- Singapore
- Switzerland
- Other

Total number of AIFs 224

% by jurisdiction of AIFs marketed in Ireland under Article 42 NPPR (Q4 2014)

- Cayman Islands
- US
- Guernsey
- Hong Kong
- Ireland
- Jersey
- Luxembourg
- Singapore
- Switzerland
- UK
- Other

Total number of AIFs 45

% by jurisdiction of AIFs marketed in Ireland under Article 42 NPPR (Q3 & Q4 2014)

- Cayman Islands
- US
- Guernsey
- Ireland
- Jersey
- Luxembourg
- Singapore
- Switzerland
- UK
- Hong Kong
- Other

Total number of AIFs 269

Source: ESMA Advice
ESMA Statistics
Marketing into Luxembourg: EU AIFM + non-EU AIF

None!
ESMA Statistics
Marketing into Luxembourg: non-EU AIFM + EU/non-EU AIF

% by jurisdiction of AIFs marketed in Luxembourg under Article 42 NPPR (Q3 2014)

- Cayman Islands: 42%
- US: 37%
- Guernsey: 10%
- Jersey: 3%
- Ireland: 2%
- Luxembourg: 1%
- UK: 1%
- Other: 2%

Total number of AIFs: 191

% by jurisdiction of AIFs marketed in Luxembourg under Article 42 NPPR (Q4 2014)

- Cayman Islands: 63%
- US: 0%
- Guernsey: 25%
- Jersey: 0%
- Ireland: 0%
- Luxembourg: 0%
- UK: 0%
- Other: 5%

Total number of AIFs: 16

% by jurisdiction of AIFs marketed in Luxembourg under Article 42 NPPR (Q3 & Q4 2014)

- Cayman Islands: 43%
- US: 36%
- Guernsey: 1%
- Jersey: 1%
- Ireland: 1%
- Luxembourg: 5%
- UK: 3%
- Other: 1%

Total number of AIFs: 207

Source: ESMA Advice
Impact and next steps
Impact of ESMA publications

European Commission has 3 months to accept the advice and opinion and release a Delegated Act. Impact and functioning of the passport in 3 chosen countries are currently unknown.

Await further publication from ESMA on extension to additional counties.

What is the impact of these publications?

NPPR will continue to function as normal over the next 3 months and onwards for those countries not chosen for the extension.

Expect activity in response from those countries seeking to be included by perhaps addressing the perceived weaknesses identified by ESMA, eg. Cayman, Bermuda.

Await further publication from ESMA on extension to additional counties.
Current AIFMD marketing options if AIFM is unable to access EU passport

- **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
Our AIFMD Notification Expertise

- Devised **notification letters** for use in jurisdictions with no templates
- Advise clients on compliance with **investor disclosure** requirements
- Conduct feasibility studies on whether distribution to **retail investors** is possible
- Advise on and submit **Article 32 filings** (EU AIFM with EU AIF)
- Research and submit **Article 36 notifications** (EU AIFMs with non-EU AIFs)
- Assess and submit **Article 42 notifications** (non-EU AIFMs with non-EU AIFs)
Any questions?

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