



October 2013

ESMA – Guidelines on AIFMD Reporting Obligations

On 1 October, the European Securities and Markets Authority (“**ESMA**”) published its final guidelines (the “**Guidelines**”) on the reporting obligations to national competent authorities imposed on Alternative Investment Fund Managers (“**AIFMs**”) under articles 3 and 24 of the Alternative Fund Managers Directive (“**AIFMD** or the “**Directive**”).

The intention of these new detailed regulatory reporting requirements is to enable competent authorities to monitor and manage potential systemic risk to the financial markets.

The detailed requirements of these reporting obligations are contained in EU Regulation 231/2013 (the “**Regulations**”). The reporting obligations require AIFM to provide details of:

- ▣ the main instruments it is trading on behalf of the Alternative Investment Funds (“**AIFs**”) it acts for;
- ▣ the markets of which it is a member or upon which it actively trades;
- ▣ the principal exposures and most important concentrations of each AIF it manages;
- ▣ the diversification of the each AIF’s portfolio (including its principal exposures);
- ▣ the percentage of each AIF’s assets subject to special arrangements arising from their liquidity;
- ▣ the current risk profile of each AIF and the risk management systems employed by the AIFM to manage the market, liquidity, counterparty, operational and other risks;
- ▣ the main categories of other assets in which the AIF is invested; and
- ▣ the stress testing performed in line with the Directive.

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ESMA issued its Guidelines in order to seek to standardise the interpretation of the reporting obligations under the Regulations within the EU. These include some significant clarifications including:

▣ **Transitional Arrangements**

ESMA has now confirmed that existing AIFMs may take account of the transitional periods in the Directive for the purpose of determining when to make their first reports. This is a welcome clarification as it is less onerous than had been anticipated.

▣ **Reporting Periods**

The reporting periods are based upon the calendar year. They end on the last business day in March, June, September and December of each year. Accordingly, AIFMs which are subject to yearly reporting obligations will report as of the last business day of each year.

AIFMs should start reporting to their national competent authority (“**NCA**”) as from the first day of the following quarter after they have information to report, until the end of their first reporting period. For example, an AIFM subject to half-yearly reporting obligations that has information to report as from 15 February, would start reporting information to their NCA as from 1 April to 30 June.

▣ **Master Feeder:**

The Guidelines do not apply the reporting obligations to non-EU master AIFs not marketed in the EU when one of the feeder AIFs is (a) marketed in the EU or (b) an EU feeder AIF (as it had originally intended to).

However, ESMA has separately recommended in its Opinion (outlined below) that NCAs should seek this information if the non-EU master AIF and a feeder AIF have the same AIFM.

In addition to the Guidelines, on 1 October 2013 ESMA also issued an Opinion which contains a number of recommendations in respect of additional details which ESMA believes NCAs should seek from AIFMs they regulate, including information on:

- ▣ the total number of transactions carried out using a high frequency algorithmic trading technique;
- ▣ the geographic focus based upon the investments made;
- ▣ the value-at-risk (“**VaR**”) of the AIFs;
- ▣ non-EU master AIFs not marketed in the EU (as outlined above);
- ▣ short positions (including whether the positions used to hedge a position with similar economic expense).

The full text of the Guidelines is available on the EMSA website. Click [here](#) for link. The Guidelines are currently being translated into the official EU languages and will be officially published on the ESMA website once this process has been completed. Each EU member state will have two months from the date on which the Guidelines are officially published on the ESMA website to confirm to ESMA whether they intend to comply with the Guidelines or explain why they do not intend to do so.

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October 2013

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