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# **Overview to AIFMD and CISA**

**GATEWAY TO EUROPE  
IN LIGHT OF  
REGULATORY CHANGES**



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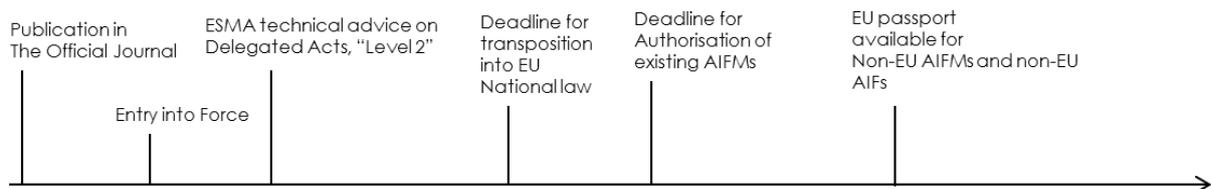
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## INTRODUCTION

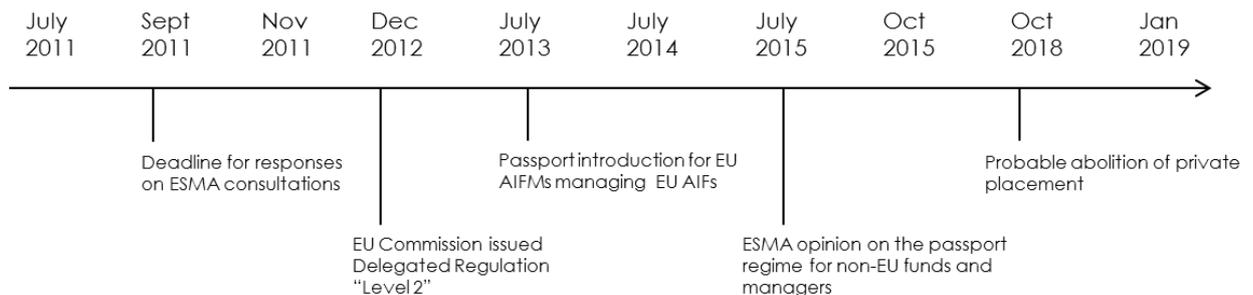
The Alternative Investment Fund Managers Directive (AIFMD) by introducing a harmonized regulatory and supervisory framework will affect alternative investment funds (AIFs) and managers (AIFMs) that operate and market in EU. UCITS funds are the only exception since they are not covered by the AIFMD. The directive will impose requirements related to governance, organizational structure and conduct of business. At the moment, in order to comply with AIFMD, managers are enabled to choose to

different paths: full AIFMD compliance, only for EU AIFMs managing EU AIFs, or National Private Placement Regime (NPPR), for any other possible combination of AIFMs and AIFs. On the same page, in Switzerland, the revised CISA took account of the AIFMD implications in EU and removed the private placement regime effective until March 2013, thus requiring fund marketed in the country to seek authorisation with the Swiss Financial Market Supervisory Authority (FINMA).

### AIFMD key procedural phases:



### ROAD TO AIFMD IMPLEMENTATION





## MARKETING IN THE EUROPEAN UNION

The implementation of the AIFMD was subject to a transitional period which expired on 22 July 2014. EU AIFMs marketing EU AIFs will have access to an EU wide passport to market these AIFs to professional investors.

No passport will be available for AIFs managed by non-EU AIFMs or for non-EU AIFs managed by EU AIFMs until at least 2016.

From the end of the transitional period, it will be necessary to comply with new national private placement regimes introduced under AIFMD to

market such AIFs in the EU, except in cases of genuine reverse solicitation.

National private placement regimes under AIFMD are implemented on a country-by-country basis – AIFMD imposes certain minimum requirements but individual EU member states can (and do) impose stricter or additional requirements.

To comply with the private placement regime in an EU state it is generally necessary to register the AIF with or obtain marketing authorisation for the AIF from the regulator in that country.

Marketing regimes and timelines:

EU AIFM + EU AIF	From 2013	Passport for marketing
EU AIFM + Non-EU AIF	2013 - 2015	NPPR only
	From 2015	Passport for marketing may become available
	2015 - 2018	NPPR and Passport will co-exist
	Post 2018	NPPR may end, marketing possible only with Passport
Non-EU AIFM + EU AIF or Non-EU AIF	2013 - 2015	NPPR only
	From 2015	Passport for marketing may become available
	2015 - 2018	NPPR and Passport will co-exist
	Post 2018	NPPR may end, marketing possible only with Passport

## EU MARKETING PASSPORT

The introduction of a single market for the marketing of AIFs to professional investors in the EU is one of the main changes in the AIFMD.

The new regime is based on a single authorisation in the AIFM Member State to market the AIFs under management to professional investors, with a subsequent regulator-to-regulator notification process.

The AIFM will need to submit a notification file to the EU Member State, distinct from the information required to apply for the authorisation to manage AIFs.

The Marketing Passport is available to EU AIFMs marketing EU AIFs since the 22 July 2013 and will be the only way for authorised EU AIFMs to market EU AIFs to professional investors in the EU.

On 31st July ESMA issued its long awaited 'Advice' to the European Parliament, the Council and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs. Having failed to meet its deadline of 22nd July for the publication of its advice ESMA granted itself an extension into the following week.

Having announced that it would adopt a country-by-country approach, ESMA resisted making any general recommendations and, based on "detailed

assessments" of the regulatory regimes in only 6 jurisdictions, recommended that Jersey, Guernsey and Switzerland are likely to meet all AIFMD requirements whilst Hong Kong, Singapore and the U.S.A. require further investigation due to various concerns thrown up by ESMA's initial assessments. No specific mention of the Cayman Islands.

## NATIONAL PRIVATE PLACEMENT REGIME

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For an initial period following the transposition of the AIFMD, the marketing of non-EU AIFs managed by EU AIFMs, and EU and non-EU AIFs managed by non-EU AIFMs will continue to be permitted under NPPR.

EU AIFMs managing non-EU AIFs marketed to professional investors in the EU via the NPPR will have to comply with the AIFMD from the 23 of July 2014 onwards, except for the full depositary provisions. However they will need to ensure that one or more entities are appointed to perform the cash monitoring, safe-keeping and oversight duties (depositary life).



Non-EU AIFM managing EU AIF or non-EU AIFs that are marketed in the EU will need to comply only with the transparency requirements: annual report, pre-sale disclosure, regulatory reporting and the major holdings and control requirements.

NPPRs may continue in parallel with the Passport regime from 22 July 2015 until 22 July 2018. In 2018 the Commission may bring the NPPRs to an end, subject to ESMA's opinion and replace it with their Passport regime.

## MARKETING IN SWITZERLAND

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As a non-EU jurisdiction, Switzerland is under no obligation to implement the AIFMD. That being said, Switzerland amended its legal framework to take into account the AIFMD provisions on third countries.

The revised CISA, in effect since March 2013, removes the private placement regime and embodies a general obligation for managers of funds to obtain a license from the FINMA. Furthermore, the revised CISA provides for de minimis rules according to which the managers of funds, whose investors are "qualified investors", do not need to be regulated.

One of the important novelties deriving from the revised CISA is the possibility for a foreign manager to operate in Switzerland as a branch.

The authorisation of a branch by the FINMA is subject to the following requirements:

- o The foreign manager is subject to an "adequate" supervision by its home regulator;
- o The foreign manager has an adequate organisation, sufficient financial resources,

- as well as competent staff in order to operate a branch in Switzerland; and
- o There is a Cooperation Agreement in place between FINMA and the foreign manager home regulator.

This will enable foreign managers exclusively targeting foreign investors to avoid any registration and still market their funds by appointing a Swiss regulated fund representative, a paying agent (a Swiss bank) and a distributor in Switzerland.

## REPORTING OBLIGATIONS UNDER AIFMD

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The purpose of the reporting obligations under AIFMD is to enhance regulators' ability to identify, assess, monitor and manage systemic risk effectively. In this respect, AIFMs are required to provide certain information to their competent authority on a regular basis for each AIF managed.

The AIFMD sets out detailed reporting requirements, which fall under two main areas: Remuneration Policy (Article 13, Annex II) and Transparency Requirements (Articles 22, 23, 24; Annex IV).

The first is intended for AIFMs to provide further details in connection with: types of remuneration caught by the AIFMD; how to identify the categories of staff covered; the proportionality principle; AIFMs being part of a group; financial situation of the AIFM; governance of remuneration; requirements on risk alignment.

The second area instead focuses on: disclosure on principal markets and instruments traded; main categories of assets held by each AIF, including principal exposures and concentrations; percentage of assets subject to special arrangements due to illiquidity, any new liquidity arrangements and results of liquidity stress tests; risk profile of the AIF, risk management systems employed and results of stress tests; for AIF using leverage on a substantial basis, reporting on the level of leverage in each AIF distinguishing between sources of leverage, identity of the five largest sources of borrowed cash/securities and extent that assets are re-used under leveraging arrangements; additional reporting may be requested by the competent authorities on an ad-hoc basis.

The ESMA published a series of guidelines in order to guarantee a common and uniform application of the reporting rules that derive from Articles 3(3)(d) and 24(1),(2) and (4) of the directive to the national competent authorities (NCAs).

## **SUPPORT TEAM: Hyde Park Investment & Partners**

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### ***HYDE PARK INVESTMENT – Marketing***

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Hyde Park Investment brings together an international team of professionals with many years of financial services experience, in a variety of markets, from a range of blue chip investment banks. Having developed a detailed knowledge of the core buyers of hedge funds throughout Europe continuously over the last ten years, the team at Hyde Park Investment is ideally positioned to reduce the time-consuming effort of raising capital and marketing using in-house resources.

#### ***HAKO GRAF VON FINCKENSTEIN***

Hako has twenty-five plus years experience in investment banking and the hedge fund industry. In 1988 Hako started his career with Deutsche Bank, for whom he worked in Frankfurt, Singapore and New York. Prior to co-founding Hyde Park Investment, Hako was an Executive Director at UBS in London (coming from SG Warburg) with managerial responsibility for the distribution of Pan-European Equities to German institutional investors. Hako received a Masters in Business Management from Ludwig-Maximilian University in Munich in 1987 and is fluent in English, German and French. Approved by the Financial Conduct Authority and Malta Financial Services Authority.

### ***ROBERT QUINN CONSULTING – Regulatory Expert***

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Robert Quinn is a financial regulatory compliance consultancy providing tailored advice to financial services firms on their FCA, SEC and NFA/CFTC regulatory obligations. Robert Quinn is the only compliance consultancy under one roof in London that fundamentally understands both FCA and U.S. regulatory obligations and offers a variety of services to help you meet your regulatory obligations in the UK, the United States or a single globally-integrated compliance programme that works in both countries.

#### ***MARINA BRIGHOUSE-THORPE***

Marina Brighouse-Thorpe has a phenomenal 17 years' experience in compliance primarily in the asset management arena. Her broad expertise is comprised of institutional, retail, UCITS, non-UCITS and private clients and includes FCA, SEC, CFTC/NFA and other European jurisdictions. Starting with in house compliance roles at Colonial Mutual Holdings (UK) Ltd, Global Asset Management Ltd and Aberdeen Asset Management Ltd, Marina moved into outsourced compliance support for the past 10 years as a Partner at Meteora Partners LLP. During her career Marina has covered all aspects of compliance from monitoring activities (front and middle office) to the implementation of regulatory changes in the UK (FCA) and USA (SEC, CFTC), disclosure/takeover filings and the training of investment managers on key topics such as money laundering, market abuse, and insider dealing. She holds a BA Hons from Kings College University of London and is also fluent in Italian, Spanish and Portuguese. Marina joined Robert Quinn Consulting in July 2013.

## **ARKK SOLUTIONS – Annex IV Reporting**

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Arkk Solutions is a leading regulatory reporting software vendor based in London. Their reporting software is widely used where regulators demand that a specific data format is used to report under a current piece of legislation. To assist firms with AIFMD filing they have created a reporting solution that can be used in-house or as a cloud based service. The software works within Excel and allows you to populate ESMA templates, validate that data and create XML format reports, to file directly with all the jurisdictions that fall under ESMA. Their software is used by some of the largest funds in the world including Schroders, Blackstone and Bain. Having worked with some funds who had to file in October 2014 Arkk's software has already been used to file Annex IV returns in UK, Ireland, Sweden, Finland and Luxembourg.

### **ANDY GENT**

Andy Gent is a Co-Founder of Arkk Solutions and is responsible for the Regulatory Reporting Products stream. Andy's background spans business consulting and technology. Having run a number of successful companies in Australia, and mentored and invested in several more, Andy now concentrates his time on the Regulatory Reporting products within Arkk.

## **CONCEPT ONE – Annex IV Reporting**

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ConceptONE, LLC is a uniquely positioned financial technology firm that specializes in Regulatory Reporting, Risk Management, and Middle and Back Office Services. Its solutions include a cloud based software solution that when combined with our advisory capabilities set our offering apart from competitors when it comes to regulatory filings (Form PF, CPO-PQR, AIFMD Annex IV, ESMA Short Sale Reporting, EMIR Reporting), new transparency reporting standards (Open Protocol) and risk reporting. Additionally, ConceptONE can cross purpose aggregated data to ensure consistency across all forms of reporting.

### **GARY KAMINSKY**

Gary brings over 27 years of experience in the securities industry, particularly with regard to issues relating to the legal/compliance and operational infrastructure of asset management companies. At ConceptONE, Gary continues a distinguished career in the financial services sector that began as an attorney with the Enforcement Division of the Securities and Exchange Commission. Most recently, Gary has been advising clients in the development, implementation and maintenance of regulatory enterprise risk management infrastructure as a Principal of Rothstein Kass Business Advisory Services. He is a frequent speaker on industry panels relating to Form PF, AIFMD and other current regulatory issues. Gary has also served as a co-founder, COO, CCO and General Counsel for two hedge fund management companies. Prior to launching those funds, Gary was CCO and Counsel for Susquehanna Investment Group, preceded by a position as a securities and regulatory attorney with Dechert, LLP. Gary received a Bachelor of Arts degree from the University of North Carolina at Chapel Hill, and his Juris Doctor from the State University of New York at Buffalo.

## **CUMMINGS LAW – Legal Support**

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Cummings is a boutique law firm specialising in funds and fund management, offering a dedicated, bespoke legal service. Cummings offers specialised legal advice for start-ups, existing funds and fund managers. Our highly responsive, client-orientated attitude enables us to respond to client needs swiftly and offers a fast turnaround of documents.

### **CLAIRE CUMMINGS**

Claire Cummings qualified as a solicitor in 1996 and since then has specialised in the legal issues surrounding both funds and fund management. As a solicitor in private practice, Claire has acted for a number of clients in the alternative investment arena and built up experience of a wide range of legal and regulatory matters. Claire has acted as in-house counsel and director of legal and compliance for a fund manager, where she was involved in the running and growth of a fund management business and worked closely with other directors, the trading and operations departments and brokerage counterparties. In July 2002 Claire established Cummings and draws on her experience as both a lawyer and a director of a fund management company to work with her clients as they establish and build their businesses.

## **INDOS FINANCIAL - Depositary Life**

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INDOS Financial is a specialist independent AIFMD depositary, authorised as an Article 36 Custodian by the UK Financial Conduct Authority. INDOS offers a pragmatic and flexible depositary solution to non-EU alternative investment fund managers seeking to market alternative investment funds in certain European countries which require the appointment of a depositary. Whilst most depositary businesses are only willing to undertake these duties where an affiliated entity performs fund administration for the fund, INDOS will work alongside existing service providers (prime brokers and administrators) and there is no significant operational impact on managers themselves.

### **BILL PREW**

Bill is qualified accountant with over 18 years financial services experience. Between 1993 and 2000 he trained and worked in PwC's financial services practices in London and Sydney. Between 2000 and 2002 he worked for email technology company before returning to financial services and joining Barclays Global Investors in 2002. At BGI, Bill served as European Chief Financial Officer and then Head of Supplier Management, with responsibility for the management and oversight of BGI's European outsourced supplier relationships providing custody, fund accounting, transfer agency and client reporting services. In December 2007, Bill joined Moore Capital Management to support the spin-out of the management of the \$3.5bn Moore Credit Fund to James Caird Asset Management. At JCAM he was responsible for a range of operational areas including finance, legal, compliance, product control, investment operations, fund accounting and technology. On leaving JCAM in December 2012 to focus full time on the INDOS business he held the position of Chief Operating Officer. Bill is a recognised independent expert on AIFMD and has presented at many industry events and been published widely in the industry press.

## **ALTARINE PARTNERS – Risk Management**

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Altarine Partners is a Risk Management advisory boutique dedicated to the alternative asset management industry and its service providers. Altarine Partners offers customised advisory services to asset managers, investors and service providers on all key risk components: Risk Management, Risk Measurement and Risk Monitoring. In particular, Altarine Partners provides customised assistance to fund managers in order to comply with the new requirements for risk management and related policies imposed by AIFMD.

### **ISABELLE TYKACZINSKI**

Isabelle is the founder of Altarine Partners. She brings over 20 years' experience in financial markets, investment and risk management combined with a thorough quantitative and technical expertise. She started her career in investment banking, specialising in structured products and for the past 10 years has primarily focused on delivering risk management solutions to asset managers. She graduated from ENSAE in France, has a Master Degree in Probability and Stochastic Calculus and is a Qualified Actuary.

## **HAWKSMOOR PARTNERS – PR Support for AIFs**

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Hawksmoor provides cost-effective structuring and communications solutions for alternative investment businesses. We provide flexible services for both start up and established hedge fund groups, financial services companies and other corporates. We also deliver communications, public relations and digital marketing solutions tailored to the needs of investment managers and their service providers.

### **GRAHAM MAY**

Graham is a qualified lawyer, conversant with all areas of law, but with particular emphasis on hedge funds. He has over 25 years of experience in the alternative investments business, including international experience as a practising attorney in the Cayman Islands, where he advised on banking, insurance, trusts and mutual funds. From 1989 he was based in the UK as a lawyer and manager for Gaiacorp, the currency hedge fund, and subsequently as Managing Director of its London subsidiary, Titan Capital Management, where he played a key role in developing the firm's global business, including creating and managing global investment management, fund administration and independent financial adviser networks. He then helped to coordinate Titan's sale in 2002. Graham has worked extensively as a consultant in the City of London, including with Mottram Partners, a legal, accounting and compliance subsidiary of a PLC, and subsequently at Millers Associates. Graham can advise on all aspects of accounting and corporate / company secretarial procedures and is also a practising consultant solicitor. He has an MA in Law from Cambridge University.

## **HUGO FUND SERVICES – Swiss Representation**

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Hugo Fund Services is an independent firm, wholly owned by its partners. The team is composed of senior investment professionals from the alternative investment industry, with strong knowledge of the Swiss market. The objective of Hugo Fund Services is to provide an efficient, personalized and service-oriented approach to guide foreign funds through the distribution process in the Swiss qualified investor market, and ensuring full compliance with the Swiss regulatory landscape. The deep understanding the firm's principals have of the alternative investment industry will allow for a service that fully integrates the specificities of this industry.

### **ANNE-CATHRINE FROGG SPADOLA**

Anne-Cathrine has 20 years of fund industry, private banking and global asset management experience. Most recently, Anne-Cathrine was a portfolio manager and senior analyst, member of several internal fund executive committees at Mirabaud & Cie's Geneva offices, with primary responsibility for multi-manager, multi-strategy hedge fund portfolios. Prior to joining Mirabaud in 2004, Anne-Cathrine was a hedge fund analyst and portfolio manager at Agora Capital Services and Banque Franck in Geneva, and a member of the European funds management team of Commodities Corporation and Goldman Sachs Asset Management. Anne-Cathrine holds a masters degree in International Relations (1994) from the Institut Universitaire des Hautes Etudes Internationales in Geneva. Anne-Cathrine speaks English, Norwegian, French, Dutch and German.

## SOURCES AND LITERATURE

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