

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (Text with EEA relevance)

CHAPTER IV

TRANSPARENCY REQUIREMENTS

Article 22

Annual report

1 An AIFM shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, make available an annual report for each financial year no later than 6 months following the end of the financial year. The annual report shall be provided to investors on request. The annual report shall be made available to the competent authorities of the home Member State of the AIFM, and, where applicable, the home Member State of the AIF.

Where the AIF is required to make public an annual financial report in accordance with Directive 2004/109/EC only such additional information referred to in paragraph 2 needs to be provided to investors on request, either separately or as an additional part of the annual financial report. In the latter case the annual financial report shall be made public no later than 4 months following the end of the financial year.

2 The annual report shall at least contain the following:

- a a balance-sheet or a statement of assets and liabilities;
- b an income and expenditure account for the financial year;
- c a report on the activities of the financial year;
- d any material changes in the information listed in Article 23 during the financial year covered by the report;
- 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.

3 The accounting information given in the annual report shall be prepared in accordance with the accounting standards of the home Member State of the AIF or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF rules or instruments of incorporation.

The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts⁽¹⁾. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

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By way of derogation from the second subparagraph, Member States may permit AIFMs marketing non-EU AIFs to subject the annual reports of those AIFs to an audit meeting international auditing standards in force in the country where the AIF has its registered office.

4 The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the content and format of the annual report. Those measures shall be adapted to the type of AIF to which they apply.

Article 23

Disclosure to investors

1 AIFMs shall for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union make available to AIF investors, in accordance with the AIF rules or instruments of incorporation, the following information before they invest in the AIF, as well as any material changes thereof:

- a a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF;
- b a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
- c a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;
- d the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;
- e a description of how the AIFM is complying with the requirements of Article 9(7);
- f a description of any delegated management function as referred to in Annex I by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- g a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Article 19;
- h a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- i a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- j a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;
- k the latest annual report referred to in Article 22;

- l the procedure and conditions for the issue and sale of units or shares;
 - m the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with Article 19;
 - n where available, the historical performance of the AIF;
 - o the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;
 - p a description of how and when the information required under paragraphs 4 and 5 will be disclosed.
- 2 The AIFM shall inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Article 21(13). The AIFM shall also inform investors of any changes with respect to depositary liability without delay.
- 3 Where the AIF is required to publish a prospectus in accordance with Directive 2003/71/EC or in accordance with national law, only such information referred to in paragraphs 1 and 2 which is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in the prospectus.
- 4 AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the Union, periodically disclose to investors:
 - a the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
 - b any new arrangements for managing the liquidity of the AIF;
 - c the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.
- 5 AIFMs managing EU AIFs employing leverage or marketing in the Union AIFs employing leverage shall, for each such AIF disclose, on a regular basis:
 - a any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
 - b the total amount of leverage employed by that AIF.
- 6 The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the disclosure obligations of AIFMs referred to in paragraphs 4 and 5, including the frequency of the disclosure referred to in paragraph 5. Those measures shall be adapted to the type of AIFM to which they apply.

Article 24

Reporting obligations to competent authorities

- 1 An AIFM shall regularly report to the competent authorities of its home Member State on the principal markets and instruments in which it trades on behalf of the AIFs it manages.

It shall provide information on the main instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the principal exposures and most important concentrations of each of the AIFs it manages.

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2 An AIFM shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, provide the following to the competent authorities of its home Member State:

- a the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- b any new arrangements for managing the liquidity of the AIF;
- c the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
- d information on the main categories of assets in which the AIF invested; and
- e the results of the stress tests performed in accordance with point (b) of Article 15(3) and the second subparagraph of Article 16(1).

3 The AIFM shall, on request, provide the following documents to the competent authorities of its home Member State:

- a an annual report of each EU AIF managed by the AIFM and of each AIF marketed by it in the Union, for each financial year, in accordance with Article 22(1);
- b for the end of each quarter a detailed list of all AIFs which the AIFM manages.

4 An AIFM managing AIFs employing leverage on a substantial basis shall make available information about the overall level of leverage employed by each AIF it manages, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements to the competent authorities of its home Member State.

That information shall include the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.

For non-EU AIFMs, the reporting obligations referred to in this paragraph are limited to EU AIFs managed by them and non-EU AIFs marketed by them in the Union.

5 Where necessary for the effective monitoring of systemic risk, the competent authorities of the home Member State may require information in addition to that described in this Article, on a periodic as well as on an ad-hoc basis. The competent authorities shall inform ESMA about the additional information requirements.

In exceptional circumstances and where required in order to ensure the stability and integrity of the financial system, or to promote long-term sustainable growth, ESMA may request the competent authorities of the home Member State to impose additional reporting requirements.

6 The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying:

- a when leverage is to be considered to be employed on a substantial basis for the purposes of paragraph 4; and
- b the obligations to report and provide information provided for in this Article.

Those measures shall take into account the need to avoid an excessive administrative burden on competent authorities.

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(1) [OJ L 157, 9.6.2006, p. 87.](#)