

Notifying the FCA you intend to provide cross-border services when marketing an AIF

Introduction

Before you can get a marketing passport for an Alternative Investment Fund [AIF], you must notify the relevant Competent Authorities by completing a form and sending supporting documents. This short guide for AIF managers will assist with the completion of the form.

What is the background to this?

In granting a passport to allow full-scope UK AIFMs to market an AIF in another EEA state, we [the FCA] must notify the Competent Authorities of the EEA states where the firm intends to carry on marketing activity, and provide the following information [as prescribed in Annex IV of the Directive]:

- (a) a notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;
- (b) the AIF rules or instruments of incorporation;
- (c) identification of the depositary of the AIF;
- (d) a description of, or any information on, the AIF available to investors;
- (e) information on where the master AIF is established if the AIF is a feeder AIF;
- (f) any additional information referred to in Article 23(1) for each AIF the AIFM intends to market;
- (g) the indication of the Member State in which it intends to market the units or shares of the AIF to professional investors; and
- (h) information about arrangements made for the marketing of AIFs and, where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services for the AIF.

What does the applicant firm have to do?

You will need to complete the marketing passport application form – this is designed to satisfy the notification requirement and is itself an integral part of the notification pack we send to Competent Authorities. You must send us this form, with a notification letter and the AIF rules or instruments of incorporation [see (a) and (b) above] as separate documents.

What you need to know – in general

The provision of the marketing passport is a standalone process and can only be granted to a full-scope UK AIFM and only in relation to the UK and EEA AIFs (that are not feeder AIFs, the master AIFs of which are non-EEA AIFs or are managed by non-EEA AIFMs) it manages.

We are accepting marketing passport applications with variation of permissions and new authorisations during the transitional year; the passport request can only be granted once an applicant has been authorised as a full-scope UK AIFM. You must complete the marketing passport form without direct reference to or reliance on the materials provided in the Variation of Permission or new authorisation processes. It must be a standalone summary of the intended marketing activity your firm wants to undertake. While there is a degree of repetition between the marketing and management permission, this is required by the Directive and seeks to inform the other Competent Authorities at a high level of the type of funds and associated materials that will be made available to professional investors in that EEA state..

Select security marking

The information you provide must be a comprehensive statement of the facts and, other than the intended marketing activity itself, should not refer to future undertakings e.g. an intention to update documents to reflect the required disclosures of AIFMD, since these **must** have already been completed to make the application valid.

Our specific expectations of your firm

We expect the applicant firm to include in each of the following sections of the Marketing Passport application form:

- 1.1 Details of the person we will contact with any queries on the application for a marketing passport.
- 2.1 An indication of either the discrete list of EEA states in which marketing activity is intended or All States as required. If ticking the All States box remember that certain other Member States may be charging fees payable by UK firms, upon receipt of incoming AIFMD passport notifications.
- 3.1 A brief but concise summary of the applicant's status, business and the funds which they wish to market e.g.

XYZ LLP is a UK authorised AIFM with AUM of approximately £1.7 billion. XYZ LLP is a Division of XYZ Ltd and specialises in the management of alternative investment strategies including Private Equity, Real Estate, Debt origination, Absolute Return, and Liability driven investment. XYZ LLP has over 400 staff and offices in Europe, the USA, Continental Europe, the Middle East and Asia. XYZ LLP intends to market the following funds:

<i>XYZ Private Equity Fund LLP "Ia"</i>	<i>ISIN/SEDOL/CUSIP/NOT APPLICABLE: XXXXXXXX</i>
<i>XYZ Private Equity Fund LLP "Ib"</i>	<i>ISIN/SEDOL/CUSIP/NOT APPLICABLE: XXXXXXXX</i>
<i>XYZ Real Estate Trust</i>	<i>NOT APPLICABLE</i>
<i>XYZ Real Estate Fund Feeder</i>	<i>NOT APPLICABLE</i>
<i>XYZ Debt Fund</i>	<i>NOT APPLICABLE</i>
<i>XYZ AR Fund</i>	<i>NOT APPLICABLE</i>
<i>XYZ LDI Fund</i>	<i>NOT APPLICABLE</i>

- 3.2 Confirmation of the EEA state in which each AIF is established.
- 3.3 Confirmation that the instrument constituting the fund has been included with the application. Applicants **must** provide final and compliant documents in order to be granted the marketing passport.
- 3.4 Details of the depositary that has been contracted to provide depositary services. A marketing passport will not be granted until the depositary has agreed to provide these services.
- 3.5 A list of all information available to investors before investing, including but not limited to any of the following: Limited Partnership agreements, Prospectus, addendums, a document of discrete disclosures specific to AIFMD*, Trust deeds, Instruments of Incorporation, offering memorandum, brochures, DDQ, Report and Accounts, and factsheets.
- 3.6 Only complete if the AIF is a feeder to a Master AIF.
- 3.7 Any additional information if not mentioned in 3.5*
- 3.8 Details of in-house sales teams or commercial relationships with third parties to carry out marketing.
- 3.9 A statement that marketing to retail investors will not be undertaken, the controls in place to prevent this or if the firm intends to market to retail investors a statement to

Select security marking

this effect and brief description of compliance with local law requirements. If a firm's marketing activity is managed through a third party arrangement, details of how this is controlled should be provided.

4.0 The authorised declaration by an appropriate member of the firm.

* We carry out checks on the disclosures required by the Directive and FUND 3.2.2R. If the disclosures are not made in a document of discrete disclosures specific to AIFMD and instead are held within the documents detailed in 3.5, these disclosures **must be** cross-referenced with page numbers to the documents in which they can be found via the specific tab within the Schedule of AIFs. Where marketing activity is envisaged or an AIF is open to new investment, the disclosures of Fund 3.2.2R form part of the Part 4A Permission. So all disclosures should be in place before either management permission or marketing passport can be granted without a requirement potentially delaying management of the AIF for up to one month following receipt of the disclosures.