

## Chapter 3

# Requirements for alternative investment fund managers

## 3.2 Investor information

### Application

3.2.1

R

This section applies to a *full-scope UK AIFM* of:

- (1) a *UK AIF*;
- (2) an *EEA AIF*; and
- (3) a *non-EEA AIF*.

### Prior disclosure of information to investors

3.2.2

R

An *AIFM* must, for each *UK AIF* that it manages, and for each *AIF* it *markets* in the *UK*, make available to *AIF* investors before they invest, in line with the *instrument constituting the fund*, the following information and any material changes to it:

- (1)
  - (a) a description of the investment strategy and objectives of the *AIF*;
  - (b) if the *AIF* is a *feeder AIF*, information on where the *master AIF* is established;
  - (c) if the *AIF* is a fund of funds, information on where the underlying funds are established;
  - (d) a description of the types of assets in which the *AIF* may invest;
  - (e) the investment techniques that the *AIF*, or the *AIFM* on behalf of the *AIF*, may employ and all associated risks;
  - (f) any applicable investment restrictions;
  - (g) the circumstances in which the *AIF* may use *leverage*;
  - (h) the types and sources of *leverage* permitted and the associated risks;
  - (i) any restrictions on the use of *leverage* and any *collateral* and asset reuse arrangements; and
  - (j) the maximum level of *leverage* which the *AIFM* is entitled to employ on behalf of the *AIF*;
- (2) a description of the procedures by which the *AIF* may change its investment strategy or investment policy, or both;
- (3) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, the applicable law and the existence or

- absence of any legal instruments providing for the recognition and enforcement of judgments in the territory where the *AIF* is established;
- (4) the identity of the *AIFM*, the *AIF's depositary*, the auditor and any other service providers and a description of their duties and the investors' rights;
  - (5) a description of how the *AIFM* complies with the requirements referred to in ■ IPRU-INV 11.3.11G (Professional negligence) relating to professional liability risk;
  - (6) a description of:
    - (a) any *AIFM management function* delegated by the *AIFM*;
    - (b) any safe-keeping function delegated by the *depositary*;
    - (c) the identity of each delegate appointed in accordance with ■ FUND 3.10 (Delegation); and
    - (d) any conflicts of interest that may arise from such delegations;
  - (7) a description of the *AIF's* valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing any hard-to-value assets, in line with ■ FUND 3.9 (Valuation);
  - (8) a description of the *AIF's* liquidity risk management, including the redemption rights of investors in normal and exceptional circumstances, and the existing redemption arrangements with investors;
  - (9) a description of all fees, charges and expenses, and the maximum amounts directly or indirectly borne by investors;
  - (10) a description of how the *AIFM* ensures a fair treatment of investors;
  - (11) whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of:
    - (a) that preferential treatment;
    - (b) the type of investors who obtain such preferential treatment; and
    - (c) where relevant, their legal or economic links with the *AIF* or *AIFM*;
  - (12) the procedure and conditions for the issue and sale of *units* or *shares*;
  - (13) the latest net asset value of the *AIF* or the latest market price of the *unit* or *share* of the *AIF*, in line with ■ FUND 3.9 (Valuation);
  - (14) the latest annual report, in line with ■ FUND 3.3 (Annual report of an AIF);
  - (15) where available, the historical performance of the *AIF*;
  - (16) (a) the identity of the *prime brokerage firm*;

- (b) a description of any material arrangements of the *AIF* with its *prime brokerage firm* and the way any conflicts of interest are managed;
  - (c) the provision in the contract with the *depository* on the possibility of transfer and reuse of *AIF* assets; and
  - (d) information about any transfer of liability to the *prime brokerage firm* that may exist; and
- (17) a description of how and when the information required under ■ FUND 3.2.5 R and ■ FUND 3.2.6 R will be disclosed.

[Note: article 23(1) of *AIFMD*]

- 3.2.2A** G An *AIFM* will also need to include the following when making available the information required by ■ FUND 3.2.2R:
- (1) where a *sustainability label* is used in relation to a *UK AIF*, the information set out at ■ ESG 5.3.3R and ■ ESG 5.3.6R, in accordance with ■ ESG 5.3.2R(1); and
  - (2) where a *sustainability label* is not used in relation to a *UK AIF*, but the *AIF* uses any of the terms in ■ ESG 4.3.2R(2) in accordance with ■ ESG 4.3.2R(1), the information required under ■ ESG 5.3.2R(2).

- 3.2.3** R
- (1) An *AIFM* must inform investors before they invest in the *AIF* of any arrangement made by the *depository* to contractually discharge itself of liability, in accordance with regulation 30 of the *AIFMD UK Regulation*.
  - (2) The *AIFM* must also inform investors without delay of any changes with respect to *depository* liability.

[Note: article 23(2) of *AIFMD*]

- 3.2.4** R Where the *AIF* is required to publish a *prospectus* under article 3 of the *Prospectus Regulation*, only information referred to in ■ FUND 3.2.2 R and ■ 3.2.3 R that is additional to that contained in the *prospectus* needs to be disclosed, either separately or as additional information in the *prospectus*.

[Note: article 23(3) of *AIFMD*]

**Additional information to be made available on securities financing transactions and total return swaps**

- 3.2.4A** G
- (1) The *Securities Financing Transactions Regulation* sets out the additional information which a *full-scope UK AIFM* must make available to investors before they invest.
  - (2) ■ COLL 4.2.5BEU and ■ COLL 4.2.5CEU copy out the relevant provisions of that regulation.

- (3) A full-scope UK AIFM of an AIF that does not use securities financing transactions or total return swaps is not required to include the information in ■ COLL 4.2.5CEU in its pre-contractual documents.

**Preparation of key information document in accordance with the PRIIPs regulation**

3.2.4B

G

- (1) The PRIIPs Regulation requires the manufacturer of a PRIIP to draw up a key information document in accordance with the PRIIPs Regulation before that PRIIP is made available to retail investors (as defined in the PRIIPs Regulation).
- (2) The requirements of the PRIIPs Regulation are directly applicable.
- (3) As a result, if an AIFM makes the AIF it manages available to retail clients in the United Kingdom it must comply with the PRIIPs Regulation.
- (4) This means that, in addition to the prior disclosure of information set out at ■ FUND 3.2.2R and ■ FUND 3.2.3R, the AIFM must prepare:
  - (a) a key information document; or
  - (b) if the AIF is a non-UCITS retail scheme, a key information document or a NURS-KII document.

**Periodic disclosure**

3.2.5

R

An AIFM must, for each UK AIF it manages, and each AIF it markets in the UK, disclose to investors periodically:

- (1) the percentage of the AIF's assets that are subject to special arrangements arising from their illiquid nature;
- (2) any new arrangements for managing the liquidity of the AIF; and
- (3) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

[Note: article 23(4) of AIFMD]

3.2.6

R

An AIFM that manages a UK AIF or markets an AIF in the UK must, for each such AIF that employs leverage, disclose on a regular basis:

- (1) any changes to:
  - (a) the maximum level of leverage that the AIFM may employ on behalf of the AIF; and
  - (b) any right of reuse of collateral or any guarantee granted under the leveraging arrangement; and
- (2) the total amount of leverage employed by that AIF.

[Note: article 23(5) of AIFMD]

**Subordinate measures**

3.2.7 **G** Articles 108 and 109 of the *AIFMD level 2 regulation* provide detailed rules supplementing this section.

**Prohibition on issue of bearer units**

3.2.8 **G** The effect of section 241A of the *Act* is that no bearer *units* in a *collective investment scheme* may be issued, converted or cancelled from 1 January 2021. Similar provision is made by regulation 48 of the *OEIC Regulations* in relation to *ICVCs*. However, the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346) contain transitional provisions for the conversion of bearer *units* to registered *units* and the cancellation of bearer *units* on or before 1 January 2022.